

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

YLLI DIDANI,

Defendant.

HONORABLE DENISE PAGE HOOD

No. 21-20264

EVIDENTIARY HEARING RE: CELLPHONES

Monday, April 24, 2023

Appearances:

On behalf of Plaintiff

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Detroit, Michigan

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10:10 a.m.

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(Call to Order of the Court.)

LAW CLERK: Calling Case Number 21-20264,
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Appearances, please.

MR. BILKOVIC: Good morning, Your Honor.
Mr. Bilkovic and Timothy McDonald on behalf of the
United States.

THE COURT: Good morning to you.

MR. FINK: Good morning, Your Honor. Wade Fink and
Brian Kaplan at counsel table alongside our client,
Ylli Didani, who is present.

THE COURT: Okay. Good morning to all of you as
well. Everyone may be seated.

We're here on a number of matters: The Defendant's Motion
to Dismiss Counts 1 and 3 and the Defendant's Motion to
Suppress Cellphone Evidence, and the Defendant's Motion to
Dismiss Count 2, and the Government's Motion for Pretrial
Determination as to Jurisdiction.

It's my understanding that we have witnesses and so we're
going to proceed with the witnesses on the motion to suppress
the cellphone evidence; is that correct?

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1 **MR. BILKOVIC:** That's correct, Your Honor.

2 **THE COURT:** Okay.

3 **MR. FINK:** Yes, Your Honor, that's correct. We
4 thought it expedient to do the hearing with regard to
5 suppression first with our witnesses.

6 **THE COURT:** Okay. All right. Very good. Do you
7 have your witnesses ready?

8 **MR. BILKOVIC:** Yes, Your Honor.

9 **THE COURT:** Okay. Do you want to make any
10 preliminary statements?

11 **MR. FINK:** The only thing I would ask for, Judge, is
12 one of the witnesses in the courtroom I believe may testify
13 later at this hearing so I'd ask that for Special Agent
14 Bianchi's testimony that Special Agent Leach be sequestered.

15 **THE COURT:** Do you have any objection to that?

16 **MR. BILKOVIC:** Your Honor, I don't know that he would
17 be testifying at this hearing. He was not involved in this
18 case until 2017, which is well after these statements take
19 place. He might be a witness in the future but not for
20 anything that's going to be discussed today so I don't see any
21 reason to have him excused.

22 **THE COURT:** Do you need him at counsel table?

23 **MR. BILKOVIC:** Pardon me?

24 **THE COURT:** Do you need him at counsel table?

25 **MR. BILKOVIC:** No, I do not need him at counsel

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1 table.

2 **THE COURT:** Okay. Then he's excused. Your objection
3 is noted and preserved for the record. Is he in the courtroom
4 now?

5 AUDIENCE MEMBER: Yes, Your Honor.

6 THE COURT: Okay. Thank you.

7 **MR. FINK:** Thank you, Your Honor.

8 **THE COURT:** Do you want to make any preliminary
9 statements relative to the motion?

10 **MR. FINK:** The defense doesn't. Thank you for
11 asking, Judge.

12 MR. BILKOVIC: No, Your Honor.

13 **THE COURT:** All right. Very well. Call your first
14 witness.

15 **MR. BILKOVIC:** The government would call Agent
16 Josh Bianchi.

17 **THE COURT:** Step all the way up here to the edge of
18 the jury box to be sworn in, okay?

19 THE WITNESS: Yes, ma'am.

20 **THE COURT:** That's fine right there. I'll be
21 satisfied if you just answer, okay?

22

23 JOSHUA BIANCHI,

24 being first duly sworn to tell the truth, was
25 examined and testified upon their oath

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1 as follows:

2 **THE COURT:** Okay. Is that satisfactory to you?

3 **MR. FINK:** Judge, I'm sorry, I was speaking with my
4 client. Raising his hand -- his left hand, is that what --

5 **THE COURT:** No. I don't even require him to raise
6 any hand.

7 **MR. FINK:** Absolutely no objection to that.

8 **THE COURT:** It appears that he has his right arm in a
9 sling; is that correct?

10 **THE WITNESS:** Yes, Your Honor.

11 **THE COURT:** Okay. You may be seated.

12 State your full name and spell your last name for the
13 record.

14 **THE WITNESS:** Joshua Bianchi, B-i-a-n-c-h-i.

15 **THE COURT:** Okay. Very good.

16 **MR. BILKOVIC:** May I proceed, Your Honor?

17 **THE COURT:** You may.

18 - - -

19 (10:14 a.m.)

20 **DIRECT EXAMINATION**

21 **BY MR. BILKOVIC:**

22 **Q.** Sir, how are you employed?

23 **A.** With the United States Border Patrol.

24 **Q.** In what capacity?

25 **A.** As an intel agent in Marysville, Michigan.

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1 **THE COURT:** A what?

2 **THE WITNESS:** As an intelligence agent in Marysville,
3 Michigan.

4 **THE COURT:** Oh, okay.

5 **BY MR. BILKOVIC:**

6 **Q.** And how long have you been working at an intelligence
7 agent?

8 **A.** Since 2017.

9 **Q.** And how long have you been working for United States
10 Border Patrol?

11 **A.** Since July of 2003.

12 **Q.** So approximately 20 years?

13 **A.** Yes, sir.

14 **Q.** And, other than as an intelligence agent, what are some
15 other assignments you have had with United States Border
16 Patrol?

17 **A.** I -- I was initially assigned in Ajo, Arizona, before
18 transferring up to Detroit, and I have also been on two -- an
19 HSI task force and a DEA task force.

20 **THE COURT:** A what now?

21 **THE WITNESS:** HSI task force and a DEA task force.

22 **THE COURT:** What was your last -- I'm sorry for
23 interrupting.

24 **MR. BILKOVIC:** That's all right.

25 **THE COURT:** You all should know that if you have any

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1 objections to my questions you should state them for the
2 record. Otherwise, they are waived. Okay? Do you understand
3 that for the government?

4 **MR. BILKOVIC:** Yes, Your Honor.

5 **THE COURT:** What about defense?

6 **MR. FINK:** I understand, Judge. Thank you.

7 **THE COURT:** I'm going to ask him because I just want
8 to know. Your assignment prior to the current assignment was
9 what?

10 Prior to 2017, the last assignment you had prior to that.

11 **THE WITNESS:** Was the -- from 2014 to 2017 I worked
12 on an HSI task force.

13 **THE COURT:** Okay. All right. Go ahead. You may ask
14 him everything. I just wanted to know the prior one.

15 **BY MR. BILKOVIC:**

16 **Q.** Okay. And HSI stands for?

17 **A.** Homeland Security Investigations.

18 **Q.** And just I want to go through some of the organization or
19 the agencies. So the United States Border Patrol, that is
20 basically -- falls under Department of Homeland Security, DHS?

21 **A.** Correct.

22 **Q.** And so does HSI?

23 **A.** Correct.

24 **Q.** And HSI basically is a subagency, is it fair to say, of
25 Immigration, Customs and Enforcement, otherwise known as ICE?

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1 A. Correct.

2 Q. Did you participate in any other task force -- or other
3 agencies during your time with Border Patrol?

4 A. Yes, sir.

5 Q. What was that?

6 A. DEA.

7 Q. DEA?

8 A. Yes, sir. From 2017 to February of 2021, I believe.

9 Q. And so that would have been during the same time that you
10 were also an intelligence analyst?

11 A. Yes, sir.

12 Q. And have you had any -- I'm not going to go through all of
13 it, but have you had law enforcement training?

14 A. Yes, sir.

15 Q. Can you just describe generally what type of training you
16 have had?

17 A. I have had about approximately five months training
18 learning immigration, criminal and border search authority at
19 the Border Patrol Academy in Glynco, Georgia, in 2003.

20 I have also been cross-designated in Customs Title 19
21 training in 2006, as well as task force training in Title 19 in
22 2014.

23 Q. Sir, I think you testified that you were a task force
24 officer with HSI starting in 2014?

25 A. Yes, sir.

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1 Q. And you said that continued until approximately 2017?

2 A. Yes, sir.

3 Q. What type of task force were you involved with?

4 THE COURT: Okay. Before you get to that, do you
5 have any law enforcement experience prior to 2003?

6 THE WITNESS: No, ma'am.

7 THE COURT: You came straight into the Border Patrol?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Okay. Go ahead, counsel.

10 MR. BILKOVIC: Thank you, Your Honor.

11 BY MR. BILKOVIC:

12 Q. What type of task force were you involved in when you went
13 to HSI in 2014?

14 A. Initially it was a gun task force.

15 Q. When you say "gun task force," what does that mean?

16 A. We looked for, investigated, prosecuted cross-border-
17 related gun -- either gun smuggling or illicit activity with
18 guns.

19 Q. What type of illicit activity?

20 A. It could be money laundering. It could be drugs. It
21 could be just guns. Criminal -- cross-border criminal
22 activity.

23 Q. When you say "drug activity," are you talking drug
24 trafficking?

25 A. Yes, sir.

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1 Q. You said initially it was a gun task force. What did you
2 mean by initially?

3 A. Towards the end of -- in 2017 it became a guns and gangs
4 task force.

5 THE COURT: Guns and?

6 THE WITNESS: Gangs.

7 THE COURT: Okay.

8 BY MR. BILKOVIC:

9 Q. Now, you had mentioned that you were cross-designated for
10 Title 19?

11 A. Yes, sir.

12 Q. And does Title 19 generally -- parts of Title 19 deal with
13 authority to conduct border searches?

14 A. Yes, sir.

15 Q. And so do you have Title 19 border search authority?

16 A. Yes, sir.

17 Q. So when you went to HSI in 2014, how did you get assigned
18 cases? How did that come about?

19 A. Usually one of two ways or both ways. Either you are --
20 your group supervisor would assign you a case or you could
21 bring a case to the group from your home agency.

22 Q. And your home agency was?

23 A. The Detroit Border Patrol Station at the time.

24 Q. In January of 2015, did you open an HSI investigation into
25 Ylli Didani?

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1 A. Yes.

2 Q. And why was it generally that you opened that?

3 A. It was generally opened due to information that I received
4 from the Border Patrol.

5 Q. Information that you received from Border Patrol, was that
6 historical information?

7 A. It was.

8 Q. And we'll get into details of that throughout your
9 testimony, but can you generally describe the information that
10 you received?

11 A. Yes. In 2013 there was information -- suspicious
12 information at a marina in St. Clair Shores, Michigan, that
13 could have possibly led to drug or money smuggling back and
14 forth between Canada and the U.S.

15 Q. And so what type of investigation was it that you had
16 opened up or what crimes were you looking into?

17 A. Drugs and money laundering.

18 Q. Now, you had mentioned that you -- one of the pieces of
19 information that you were provided had to do with something
20 that occurred in St. Clair Shores in 2013?

21 A. Yes, sir.

22 Q. Can you offer any more details about what information that
23 was?

24 **MR. FINK:** Your Honor, the only objection I would
25 have is offering this for its truth. I have no objection to

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1 offering it for why he opened the investigation or why he did
2 what he did, but I don't think it's clear from any foundation
3 if it's being offered just for that purpose.

4 **MR. BILKOVIC:** I would agree with counsel. It's
5 being offered right now -- basically one of the challenges here
6 ultimately is going to be that there was -- whether there was
7 reasonable suspicion on a later date to search a phone. So I'm
8 basically getting into information that Agent Bianchi was aware
9 of and that he had at his disposal as to why he did what he
10 did.

11 **THE COURT:** Okay. Your objection is noted for the
12 record, and the Court will only consider it for the purpose
13 that it's presented.

14 **MR. FINK:** Thank you, Judge.

15 **BY MR. BILKOVIC:**

16 **Q.** So what information generally were you provided?

17 **A.** That there were certain -- the security guard at the
18 marina called us stating that there was individuals going out
19 on jet skis taking off towards Canada, they were gone for a
20 couple hours at a time, and then returning back.

21 **Q.** Now, you say "gave us." What do you mean "us"?

22 **A.** Us being the United States Border Patrol.

23 **Q.** Now, you were not involved in that in 2013; this was
24 another Border Patrol agent that received this information?

25 **A.** Correct.

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1 Q. And were there any names attached to that activity?

2 A. Yes, sir.

3 Q. And do you recall any of those names?

4 A. Yes, sir.

5 Q. What were the names that were attached?

6 A. Eric Puzio.

7 THE COURT: How do you spell that; do you know?

8 THE WITNESS: P-u-z-i-o.

9 THE COURT: Okay.

10 BY MR. BILKOVIC:

11 Q. Were there more names than Eric Puzio?

12 A. Vaughn Evasquez.

13 Q. I'm not asking what the name was. I'm just asking you
14 were there additional names.

15 A. Yes.

16 Q. I want to talk about Mr. Puzio. Did you investigate or
17 look into Mr. Puzio's background further?

18 A. Yes, sir.

19 MR. BILKOVIC: And, Judge, I want to preference this
20 all with at some point there was an incident that took place
21 that we're here for today on July 30, 2015, so all of my
22 questions of Agent Bianchi predate information prior to that.
23 I will make it clear if there's something that was information
24 after that. I just want to the make it clear for the record
25 that the information that he's testifying to now is all prior

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1 to July -- that he had received it all prior to July 30 of
2 2015.

3 **MR. FINK:** No objection to that, Judge.

4 **THE COURT:** Very well.

5 **MR. BILKOVIC:** Thank you, Your Honor.

6 **BY MR. BILKOVIC:**

7 **Q.** All right. I'm sorry, I asked you did you look into
8 Mr. Puzio's background at all?

9 **A.** Yes, sir.

10 **Q.** And was there anything about his background that you
11 remember?

12 **A.** Yes, sir.

13 **Q.** Can you tell us what that is?

14 **A.** Yes, sir. He had a prior arrest for cocaine trafficking.
15 He had a conviction for cocaine possession and felony firearm,
16 and he had been recently just released from prison and still on
17 parole.

18 **Q.** Do you recall approximately when he was released from
19 prison?

20 Let me back up. Do you know when -- approximately when he
21 was discharged from parole?

22 **A.** Yes, sir. It was October of 2013.

23 **Q.** And did you begin looking into Mr. Puzio further?

24 **A.** I did.

25 **Q.** Specifically, did you start gathering information about

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1 travel information related to Mr. Puzio?

2 **MR. FINK:** Objection to leading, and I'm sorry, but I
3 think it's important that Agent Bianchi be the one to explain
4 his steps. I wouldn't ordinarily object to a leading
5 background question.

6 **THE COURT:** Okay.

7 **MR. BILKOVIC:** I can rephrase it.

8 **THE COURT:** Rephrase.

9 **BY MR. BILKOVIC:**

10 **Q.** Did you gather other information with respect to
11 Mr. Puzio?

12 **A.** Yes, sir.

13 **Q.** What information did you gather?

14 **A.** His travel history. I put an alert on Mr. Puzio as well
15 in law enforcement databases so if he started to travel I would
16 be notified.

17 **THE COURT:** If he started what?

18 **THE WITNESS:** If he traveled, I would be notified.

19 **THE COURT:** Anywhere?

20 **THE WITNESS:** No, just outside of the United States.

21 **THE COURT:** Okay.

22 **BY MR. BILKOVIC:**

23 **Q.** So international travel you would be notified?

24 **A.** International, yes.

25 **Q.** Did you look at any other information with respect to

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1 Mr. Puzio?

2 A. I looked at a lot of information then.

3 Q. Okay. Well, you said you put out an alert with respect to
4 travel?

5 A. Yes.

6 Q. Okay. Any information relating to travel?

7 A. Yes. During that time there was multiple what appeared to
8 be suspicious travel.

9 Q. When you say "at that time," at what time?

10 A. Right after he had been released from parole.

11 Q. So late 2013?

12 A. It was actually early 2014.

13 Q. Okay. And what type of travel did you notice?

14 A. He had traveled two times to St. Maarten.

15 Q. What's unusual about that?

16 A. One, both times he went to travel to St. Maarten the
17 reservations were made the day prior to travel; and, two, he
18 only stayed there for three days. He flew in one day, stayed
19 one day, and then flew out the next day.

20 Q. And how many times did he do that?

21 A. In January and July of 2014, twice.

22 Q. Any other travel?

23 A. Yes, sir. The month -- a couple months after that he
24 traveled to Columbia, where reservations were made four days
25 prior.

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1 Q. Anything significant about Columbia?

2 A. Yes, sir. He had a travel companion, which is the
3 defendant.

4 Q. Pardon me?

5 A. He had a travel companion on there, which was Mr. Didani.

6 Q. And do you know when that was?

7 A. I believe it was August of 2014.

8 Q. And is there anything in your law enforcement experience
9 about Columbia that's of significance?

10 A. Definitely. It's a source of cocaine.

11 Q. Did you look into the Columbia travel with respect to
12 Mr. Puzio then and Ylli Didani?

13 A. I did.

14 Q. When you are talking about Didani, you are talking about
15 the defendant here today?

16 A. Yes, sir.

17 Q. And do you recall any details about that travel?

18 A. I did.

19 Q. What were the details you recall about that?

20 A. Mr. Puzio and Mr. Didani flew into Columbia. Mr. Puzio
21 stayed. Didani returned the same day.

22 Q. Do you know how far in advance the reservations were made
23 to go to Columbia?

24 A. I believe it was four days in advance.

25 Q. And you said that Mr. Puzio stayed in Columbia. Do you

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1 know how long the trip was for?

2 A. I believe it was for three or four days.

3 Q. Three or four days?

4 A. Yes, sir.

5 Q. And I want to make sure I'm clear. You said that
6 Mr. Didani basically flew there but traveled back to the
7 United States the same day?

8 A. Yes, sir.

9 Q. Do you know who made the reservations for those trips or
10 did you have information as to who made the reservation for
11 those trips?

12 A. For the Columbia trip, yes, sir.

13 Q. Yes, the Columbia trip. I'm sorry.

14 A. Yes, sir.

15 Q. And what information did you obtain with respect to that?

16 A. It was an individual named Hussein Hussein.

17 THE COURT: It was a?

18 THE WITNESS: Individual named Hussein Hussein.

19 BY MR. BILKOVIC:

20 Q. Do you know how to spell that or no?

21 A. I don't.

22 THE COURT: I've got it, but tell me this. He did
23 what? This gentleman did what?

24 THE WITNESS: This gentleman made their flight
25 arrangements to fly to Columbia.

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1 **THE COURT:** Okay. Where were they from?

2 **THE WITNESS:** Detroit.

3 **THE COURT:** Okay.

4 **BY MR. BILKOVIC:**

5 **Q.** So Hussein Hussein makes the reservations for Mr. Didani
6 and Mr. Puzio?

7 **A.** Yes, sir.

8 **Q.** Did you have any information or attempt to determine
9 whether or not he was a travel agent?

10 **A.** I did have information to know that he wasn't a travel
11 agent at the time.

12 **THE COURT:** Was or was not?

13 **THE WITNESS:** Was not.

14 **THE COURT:** Okay.

15 **BY MR. BILKOVIC:**

16 **Q.** And did you look at all into Mr. Hussein's background?

17 **A.** I did.

18 **Q.** And was there anything in particular that grabbed your
19 attention?

20 **A.** Yes, sir. There was a controlled substance arrest, and
21 the business that he was currently running was part of a
22 large-scale narcotics investigation.

23 **MR. FINK:** Objection to lack of foundation and
24 speculation.

25 **MR. BILKOVIC:** Judge, again, I'm offering this to

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1 show what information this agent possessed, not offering it for
2 the truth of the matter asserted.

3 **THE COURT:** I'm going to allow it for that purpose.

4 **MR. FINK:** Thank you, Judge.

5 **BY MR. BILKOVIC:**

6 **Q.** And were you aware of any other -- or provided any other
7 information with respect to Mr. Hussein?

8 **A.** Yes. Records when Mr. Hussein was entering the border
9 showed that he was -- entered multiple times with large amounts
10 of money, cash.

11 **Q.** Do you know when those occurred? And, again, when I ask
12 the questions, it's the information that you received. Did you
13 have information as to when those occurred?

14 **A.** I do in my report. I do not remember the date.

15 **Q.** Do you remember the year?

16 **A.** It would have been --

17 **Q.** If you don't, it's okay.

18 **A.** I don't. I don't recall.

19 **Q.** We'll come back to that.

20 **A.** Okay.

21 **Q.** Anything else about Mr. Hussein?

22 **A.** I believe that is it.

23 **Q.** Did you receive any information about any vehicles
24 registered in Mr. Hussein's name?

25 **A.** Yes, sir.

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1 Q. What information did you receive?

2 A. There was suspicious activity at the Detroit River, where
3 a vessel had come over. The Coast Guard tried to stop him.

4 Q. When you say "come over," come over from where?

5 A. Canada.

6 Q. Okay.

7 A. The Coast Guard tried to stop him. They loaded up on a
8 trailer and took off. The vehicle -- the truck that took off
9 was registered to Mr. Hussein Hussein.

10 Q. Okay. I want to back up then a little bit and go through
11 some of this. Do you know when that occurred? Do you know the
12 year?

13 A. I do not recall.

14 Q. Would you have that detailed in your reports?

15 A. Yes, sir.

16 Q. Okay.

17 MR. BILKOVIC: Judge, instead of going back and
18 refreshing his memory, I'm going to kind of keep a list and
19 maybe at the end do it all at once to save some time if that's
20 okay.

21 THE COURT: Okay.

22 BY MR. BILKOVIC:

23 Q. Now, you said basically the vehicle -- or it was a vessel
24 from Canada that came where?

25 A. Into the United States.

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1 Q. Okay.

2 A. Into a marina.

3 Q. And were there efforts made to try to stop that vessel
4 before it reached the United States?

5 A. Yes.

6 Q. And were those successful according to the report?

7 A. No.

8 Q. So was the vessel eventually basically located?

9 A. Yes.

10 Q. And where was it located? Was it in the water or was it
11 somewhere else?

12 A. It was on a trailer out of the water.

13 Q. And was the trailer attached to a vehicle?

14 A. Yes, sir.

15 Q. And who owned the vehicle? Who was the vehicle registered
16 to?

17 A. Hussein Hussein.

18 Q. Did you look at any other travel information with respect
19 to Mr. Puzio and Mr. Didani?

20 A. Yes, sir.

21 Q. And was there anything else?

22 A. Yes, sir.

23 Q. What other information?

24 A. About two months after the Columbia trip they both
25 traveled together to Albania.

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1 Q. Do you know approximately when that was?

2 A. I'm sorry?

3 Q. Do you know approximately when that was?

4 A. October of 2014.

5 Q. And did they come back to the United States together?

6 A. They did not.

7 Q. Did you look further into Mr. Didani's background?

8 A. Yes, sir.

9 Q. And were you able to determine whether or not he was a
10 United States citizen?

11 A. Yes, sir.

12 Q. And was he or was he not?

13 A. He was not.

14 Q. Did he have a legal status in the United States?

15 A. Yes, he did.

16 Q. What was that?

17 A. A lawfully admitted permanent resident.

18 Q. Do you know or did you determine where he was a citizen,
19 what his citizenship was?

20 A. Yes.

21 Q. And what was that?

22 A. Of Albania.

23 Q. Albania?

24 A. Yes, sir.

25 Q. And did you notice or did you take a look at his criminal

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1 background?

2 A. Yes, sir.

3 Q. And was there anything in his criminal background?

4 A. Yes.

5 Q. Such as?

6 A. Multiple convictions of DUIs, a couple were felonies. He
7 had a controlled substance arrest and felony firearm arrest,
8 which I believe those last two he was not convicted of.

9 Q. He was found not guilty of those offenses involving the
10 weapons, involving the drugs?

11 A. Correct.

12 Q. Do you know approximately when that was?

13 A. I do not. I believe it was 2014, if I recall correctly.
14 It would be in my report.

15 Q. Did you take a look at his travel history?

16 A. I did.

17 Q. Specifically talking about between January 1st of 2015 and
18 January 30th of 2015, did you notice anything with respect to
19 Mr. Didani?

20 A. Yes.

21 Q. And what was that?

22 A. Multiple reservations in which he was not on board the
23 plane.

24 Q. You talk about reservations. What type of reservations
25 are we talking about? Are we talking about United States

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1 travel? International travel? What are we talking about?

2 A. Travel either into or out of the United States.

3 Q. So international travel?

4 A. International travel.

5 Q. And do you know approximately how many reservations
6 Mr. Didani made in that period of time for international
7 travel?

8 A. Yes. In that seven-month span there was approximately
9 six reservations.

10 Q. And in how many of those six reservations did you receive
11 information that Mr. Didani actually boarded the flight and got
12 on the plane?

13 A. Two times he was on board.

14 THE COURT: Two times he was what?

15 THE WITNESS: On board.

16 THE COURT: Okay.

17 BY MR. BILKOVIC:

18 Q. The other four he was not?

19 A. Correct.

20 Q. Did you receive any other information about Mr. Didani?

21 A. Yes, sir.

22 Q. And what type of information was that?

23 A. That he was a part of a previous drug investigation in
24 2008.

25 Q. A previous drug investigation in 2008?

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1 A. Yes, sir.

2 Q. Who was it that did that investigation, what agency?

3 A. It was a joint task force with HSI and FBI.

4 Q. Were you involved in that or no?

5 A. I was not involved in that investigation.

6 Q. Have you had an opportunity to review reports relating to
7 that?

8 A. Yes, sir.

9 Q. And what information did you review? What did you learn
10 about that?

11 A. I learned HSI and FBI were investigating a trucking
12 company and individuals that were moving -- suspected of moving
13 marijuana or cocaine into and out of Canada as well as money
14 laundering.

15 Q. Where was the suspected trucking company located?

16 A. In the Detroit area.

17 Q. And was there anything related with respect to Mr. Didani
18 to that investigation?

19 A. Yes, sir.

20 Q. And what was that?

21 A. Well, there was surveillance done on Mr. Didani, and there
22 was also recorded phone calls.

23 Q. Recorded phone calls from who?

24 A. From a source that was part of that investigation.

25 Q. To who?

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1 A. To Mr. Didani.

2 Q. When you're talking about a source, you're talking about
3 an informant?

4 A. Yes, sir.

5 Q. And did Mr. Didani -- did you determine whether or not
6 Mr. Didani had any ties to this trucking company?

7 A. I'm sorry?

8 Q. Did you determine whether or not Mr. Didani had any ties
9 to this trucking company or did you receive any information?

10 A. Did I determine --

11 Q. Did you receive any information with respect to Mr. Didani
12 and this trucking company that was under investigation?

13 A. Yes.

14 Q. And what was that?

15 A. That there was multiple things that -- Didani was
16 suspected of hiring the source to drive trucks for this
17 trucking company that was moving drugs.

18 Q. So if there was a claim that Mr. Didani could not have
19 been involved in any type of drug-trafficking investigation in
20 2008 because he was actually in prison during all of 2008, do
21 you believe that to be true?

22 A. No, I do not.

23 Q. And have you had an opportunity to look --

24 **MR. FINK:** Objection to leading, Your Honor.

25 **THE COURT:** It sounds like it might be leading.

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1 **BY MR. BILKOVIC:**

2 Q. Let me ask you this. Did you have an opportunity to
3 review Michigan Department of Corrections information with
4 respect to Mr. Didani?

5 A. Yes.

6 Q. From that information, do you know when he was released
7 from prison?

8 A. July 3rd of 2007.

9 Q. So, based on the information that you had with respect to
10 Mr. Didani, did you do anything? You said earlier that you set
11 an alert to be alerted about Mr. Puzio's travel?

12 A. Yes, sir.

13 Q. Did you do anything with respect to Mr. Didani?

14 A. Yes, sir.

15 Q. What was that?

16 A. The same thing. I set up an alert in our law enforcement
17 databases to be notified should Mr. Didani fly into or out of
18 the United States.

19 Q. Okay. And why did you do that?

20 A. With hopes of being able to interview Mr. Didani.

21 Q. What did you want to interview him about?

22 A. His travel history and his travel companions.

23 Q. Did there come a point in time that you received an alert
24 with respect to Mr. Didani's travel?

25 A. Yes, sir.

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1 Q. When was that?

2 A. In July of 2015.

3 Q. What information did you receive?

4 A. That Mr. Didani had made reservations to fly into the
5 United States.

6 Q. And so what did you do?

7 A. I waited to make sure he was going to be on board that
8 plane, and once I found out he was on board the plane, I
9 notified Chicago O'Hare where he was entering the United States
10 and talked with CBP there to set up an interview.

11 Q. And at the time that you did that where were you?

12 A. I was stationed in -- at HSI in Detroit.

13 Q. And what day was it that Mr. Didani was supposed to come
14 into the United States?

15 A. July 30th.

16 Q. Of?

17 A. 2015.

18 Q. And you said -- I think you said it was through Chicago
19 O'Hare?

20 A. Yes, sir.

21 Q. And so did you end up going to Chicago O'Hare?

22 A. I did.

23 Q. For what purpose?

24 A. To pass information and help with the interview of
25 Ylli Didani.

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1 Q. And so at this time, even though you are United States
2 Border Patrol, you at this time are working as a TFO with HSI,
3 Homeland Security Investigations?

4 A. Yes, sir.

5 Q. So was this an HSI investigation you were doing?

6 A. Yes, sir.

7 Q. And what did you do when you got to Chicago?

8 A. I met with CBP Officer Fuentes and went over the
9 information that I had already known about Mr. Didani's travel
10 and history and questions I would like to find answers to
11 concerning travel and his travel partners.

12 Q. So what occurred next?

13 A. We waited for Mr. Didani to get off the plane. He was
14 escorted over by another CBP officer, and Mr. Fuentes started
15 interviewing Mr. Didani.

16 Q. And was that interview done in your presence?

17 A. Yes.

18 Q. So basically it was you, the agent -- the CBP agent, and
19 Mr. Didani?

20 A. Yes, and one more, the agent that brought Mr. Didani over.

21 Q. Do you remember that individual's name? If you don't,
22 it's okay.

23 A. I don't recall.

24 Q. How would you describe the interview?

25 A. Very laid back.

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1 Q. I'm sorry, I didn't hear what you said.

2 A. Very laid back.

3 Q. Okay.

4 A. Out in the open. Mr. Didani was even joking around.

5 Q. What do you mean he was joking around?

6 A. He said he gets stopped every time he flies in. And we
7 even asked why he thinks he gets stopped every time, and he
8 said because of his prior DUIs.

9 Q. And so was Mr. Didani then interviewed?

10 A. I'm sorry?

11 Q. Mr. Didani was then interviewed?

12 A. Yes.

13 Q. And can you describe the interview -- or what happened
14 during the interview?

15 A. Mr. Fuentes asked him what I would -- seem would be normal
16 stuff, to see his passport, where he was going, what he was
17 doing, and then asked him about his travel history and what
18 not.

19 Q. And was Mr. Didani asked where he lived?

20 A. Yes, sir.

21 Q. What did he say?

22 A. In Fraser. Sabre Lane, I believe.

23 Q. I'm sorry, what was the name of the street?

24 A. Sabre Lane.

25 Q. Sabre, S-a-b-r-e?

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1 A. Yes.

2 Q. Lane?

3 A. Yes.

4 Q. And did you have any opinion when he made that statement
5 to you as to whether that information that he provided was true
6 or not?

7 A. Yes.

8 Q. What was that?

9 A. I knew that wasn't true.

10 Q. When you say "you knew it wasn't true," how did you know
11 that?

12 A. Because I had done research prior to looking into
13 Mr. Didani, and it was a prior address, but someone else was
14 currently living at that address.

15 Q. Was he asked about his travel history?

16 A. He was.

17 Q. And what did he explain -- what did he say about his
18 travel history?

19 A. He said he traveled to lots of different places. I
20 believe Maldives Island for vacation, Germany for vacation. He
21 said he went to Dubai for a Drake concert. He said he had been
22 to Istanbul I believe it was nine times where he went -- he
23 both had family and business dealings there with his coal
24 business. He said he was part owner of a coal business with
25 his uncle in Albania.

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1 Q. Did you -- you said earlier there was -- you had
2 information that he had made international flight reservations
3 six times in 2015 and only boarded the plane twice?

4 A. Correct.

5 Q. Was he asked about that?

6 A. He was.

7 Q. And what did he say?

8 A. He said things just kept coming up and he had to push off
9 reservations, and he would just remake the reservations again.

10 Q. Did you ask him about the Columbia trip, where he flew to
11 Columbia and came back the same day?

12 A. I did.

13 Q. What did he say about that?

14 A. He said he was not allowed admission into Columbia so he
15 was forced to return to the United States.

16 Q. Did he say what he was going to Columbia for?

17 A. He said a wedding.

18 Q. And did he give you the name of the person who was getting
19 married?

20 A. Just the first name, Paul.

21 Q. I'm sorry?

22 A. Just the first name.

23 Q. And the first name was what?

24 A. Paul.

25 Q. Did you ask him what Paul's last name was?

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1 A. Mr. Fuentes asked, and he did not know.

2 Q. Mr. Didani did not know the last name of the person whose
3 wedding he was going to Columbia for?

4 A. Correct.

5 Q. Did he indicate -- you said that he owned -- he said he
6 was part owner of a coal-mining business. Did he give you
7 information about any other businesses he was involved in?

8 A. Yes, sir. He said he owned a car wash in Fraser,
9 Michigan.

10 Q. And did he give you the name of that car wash?

11 A. Yes. DES Detailing.

12 Q. And did he give you any information with respect to
13 Mr. Puzio?

14 A. Yes. He said his friend Eric Puzio owned a trucking
15 company and owned six or seven trucks.

16 Q. Now, you had indicated that you had researched his address
17 prior and you knew he did not live at Sabre Lane. Were there
18 any other statements that he made that your prior research had
19 led you to believe that were not truthful?

20 A. Yes, sir, all of those.

21 Q. When you say "all of those," what statement or what
22 information did you have contrary to statements he had given
23 you?

24 A. I had researched Mr. Puzio, and Mr. Puzio didn't own any
25 company or business. He did own one truck that was not

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1 currently registered at the time.

2 I had researched his address, as we stated, and somebody
3 else was currently living there.

4 I had researched businesses that Didani might be attached
5 to, and he was not listed as any business owner in the State of
6 Michigan at the time.

7 Q. So was that suspicious to you at all then?

8 A. It was.

9 Q. Why?

10 A. Because he was obviously trying to cover up, one, his home
11 address and maybe how he was making money.

12 Q. You said that he had indicated that he was a part owner of
13 a coal-mining business?

14 A. Yes, sir.

15 Q. Was he asked further about the coal-mining business?

16 A. He was.

17 Q. And did he provide any details?

18 A. Mr. Fuentes asked him multiple details about his travel to
19 Istanbul, about the hotels he stayed in when he was trying to
20 sell his coal and associates he met with, any business cards,
21 and Mr. Didani couldn't produce any of those things. He did
22 produce a photo that he pulled up on his phone and showed of a
23 business associate he met with in Turkey.

24 Q. I'll get to that in a minute. You said he was a co-owner.
25 Did you ask him about who the other owners of this coal-mining

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1 company were?

2 A. Mr. Fuentes did.

3 Q. And?

4 A. And it was his uncle.

5 Q. And did he give you his uncle's name?

6 A. He did not.

7 Q. Did you ask him for it or was he asked for it?

8 A. Mr. Fuentes asked.

9 Q. Did he not know it or did he just not want to give it, if
10 you remember?

11 A. I got the impression he just didn't want to give out his
12 uncle's information.

13 Q. Do you know whether or not Mr. Didani had any phones in
14 his possession?

15 A. Yes, sir.

16 Q. What did he have?

17 A. An iPhone.

18 Q. Did there come a point in time when Mr. Didani started
19 going through the iPhone?

20 A. Yes, sir.

21 Q. And what led to that?

22 A. There was multiple times where Mr. Didani started going
23 through the iPhone. I believe he was just trying to prove his
24 point that he was doing certain things. So he was showing us
25 pictures of his business meeting. He showed us pictures of him

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1 and his friends in a bar in Albania hanging out, and various
2 other photos of a Drake concert, I believe, he went to.

3 Q. You said there was -- I think earlier you said, and I cut
4 you off, there was a picture that he showed you of someone?

5 A. Yes, sir, in Turkey that he was selling -- or he was
6 trying to sell his coal to.

7 Q. Did he know -- or did he identify that person by name?

8 A. It was, I guess, a nickname of Tiku.

9 Q. Tiku?

10 A. I think, if I'm saying it correctly.

11 Q. T-i-k-u?

12 A. Yes, sir.

13 Q. And he indicated this was an individual in Turkey that he
14 was trying to sell his coal to?

15 A. Yes, sir.

16 Q. Did you recognize the person in the photograph that he
17 showed you?

18 A. I did.

19 Q. And did you recognize that person based on the
20 investigation that you had done up to that point?

21 A. I did.

22 Q. And did you -- do you know that person's name or did you
23 know that person's name?

24 A. Yes, sir.

25 Q. What was that person's name?

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1 A. If I'm pronouncing his name wrong, Adriatic Sheko.

2 Q. Would you have spellings of those in your report?

3 A. Yes.

4 Q. And how was it that you were familiar with Mr. Sheko?

5 A. He was part of that 2008 -- he owned the trucking company
6 that was being looked into in 2008 for drug smuggling.

7 Q. What else happened during the encounter with Mr. Didani at
8 the airport?

9 A. Mr. Fuentes eventually asked if it was okay if he looked
10 at his phone, looked at the pictures.

11 Q. And did Mr. Didani give him his phone?

12 A. Yes.

13 Q. And what did Agent Fuentes do?

14 A. Mr. Fuentes started scrolling through his photos on his
15 phone.

16 Q. Did he do that in your presence?

17 A. He did.

18 Q. So it wasn't downloaded; it was like a manual scrolling?

19 A. Yes, sir.

20 Q. And were you able to see the photographs as Agent Fuentes
21 was scrolling through them?

22 A. Yes, sir.

23 Q. And were there any photographs you saw that attracted your
24 attention?

25 A. Yes, sir.

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1 Q. What types of photographs?

2 A. Photos of Mr. Didani holding what appeared to be AR-style
3 rifles. There was pistols. There was one photo of a pistol on
4 Mr. Didani's hip. There was a duffel bag full of large amounts
5 of what appeared to be U.S. Currency that was wrapped in
6 cellophane. There was a lot of photos of U.S. Currency bundled
7 up.

8 Q. And why did those pictures attract your attention?

9 A. All those photos would indicate to me of criminal
10 activity.

11 Q. What type of criminal activity?

12 A. Cross-border criminal narcotics activity.

13 Q. Such as?

14 A. Such as smuggling of narcotics, money laundering.

15 Q. Did you go through the entire phone at that time?

16 A. We could not. We did not have enough time. There was
17 a lot of information on the phone, over 10,000 photos.

18 Q. So what did you do?

19 A. At the time we were trying to make it so Mr. Didani did
20 not miss his connecting flight. We had -- I had asked a CBP
21 officer if they had the capabilities to do a phone extraction
22 and they did, and I requested that be done and they did that.

23 Q. So you obtained basically a forensic extraction of
24 Mr. Didani's iPhone?

25 A. Yes, sir.

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1 Q. And was the iPhone returned to Mr. Didani at that point?

2 A. Yes, sir.

3 Q. Did he make his flight?

4 A. He did not, but that was not due to his phone. It was due
5 to our record systems being down at the time.

6 Q. I'm sorry?

7 A. It was due to our record systems being down at the time.

8 Q. When you say "our record systems," whose record systems?

9 A. CBP.

10 Q. So did that have anything to do with the investigation
11 that you were doing?

12 A. No.

13 Q. And did you -- you indicated that the phone was
14 downloaded. Did you subsequently review all of the photographs
15 on that phone?

16 A. Yes, sir.

17 Q. And did you subsequently review -- were there any videos
18 on that phone?

19 A. Yes, sir.

20 Q. And did you subsequently review all of those?

21 A. Yes, sir.

22 Q. And when you did this, would this have been prior to
23 August of 2016?

24 A. Yes, sir.

25 Q. And was there anything in the phone when you reviewed the

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1 photographs and the videos?

2 A. Yes, sir.

3 Q. What did you see? Just in general can you describe some
4 of the items that you saw?

5 A. A lot of what appeared to be narcotics, guns, currency.
6 There was a video of somebody snorting cocaine. There was
7 another picture of a pistol next to what appeared to be a small
8 pouch of cocaine and bundles of cash.

9 Q. You may have said this already. I'm sorry, I was writing
10 something down. Did you say you saw additional U.S. Currency
11 photos?

12 A. Yes.

13 Q. Like bulk U.S. Currency?

14 A. Yes.

15 Q. Do you remember seeing anything else?

16 A. There was -- yes. There was a lot of information, over
17 10,000, again, photos and stuff. There was shipping
18 containers, shipping lines, like they were researching ways to
19 ship things.

20 Q. International shipping?

21 A. International shipping.

22 Q. When you're talking "shipping containers," what's a
23 shipping container?

24 A. It is a container that's on a massive ship that goes port
25 to port and drops -- and carries exports -- imports, exports.

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1 Q. So you're talking like big, huge shipping containers, not
2 like a small little box; correct?

3 A. Crates, yes.

4 MR. BILKOVIC: May I have one moment, Your Honor.

5 THE COURT: Sure.

6 MR. BILKOVIC: Your Honor, may I approach the
7 witness?

8 THE COURT: Yes, you may.

9 MR. BILKOVIC: Your Honor, I have tendered the
10 witness five proposed exhibits. I was going to have him go
11 through and describe them and then give them to the Court. I
12 apologize, I did not make extra copies for the Court. Would
13 that be acceptable if I did it that way?

14 THE COURT: Yes. Do you have any objection to it
15 being done that way?

16 MR. FINK: I don't. I have seen them, Judge. Thank
17 you for asking.

18 THE COURT: Okay. And are they marked?

19 MR. BILKOVIC: They are marked.

20 THE COURT: Okay.

21 BY MR. BILKOVIC:

22 Q. Starting with Proposed Exhibit 1, do you recognize that?

23 A. Yes, sir.

24 Q. And what is that?

25 A. That appears to be Mr. Didani talking with Mr. Sheko.

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1 That is the picture that was shown to me while in the airport
2 interviewing Mr. Didani.

3 Q. And that was a picture that Mr. Didani showed you?

4 A. Yes, sir.

5 Q. And could you look at Proposed Exhibit 2.

6 **THE COURT:** And he showed it to you how?

7 **THE WITNESS:** He just held his phone up and said this
8 was him making a business deal to try to sell coal, I believe.

9 **THE COURT:** Okay. All right.

10 **BY MR. BILKOVIC:**

11 Q. And all of the photographs, that's how they were -- when
12 you scroll through them, is that the same way you were actually
13 looking at them on the phone? You didn't actually have --

14 A. Correct.

15 Q. -- enlarged photographs like that, you were looking at
16 them on a screen?

17 A. Correct.

18 Q. Okay. What about Proposed Exhibit 2?

19 A. What is the question?

20 Q. Do you recognize that?

21 A. Yes.

22 Q. And what is that?

23 A. That is Mr. Didani holding up what appears to be an
24 AR-style rifle.

25 **THE COURT:** A what?

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1 **THE WITNESS:** AR-style rifle, an automatic --

2 **THE COURT:** Okay.

3 **THE WITNESS:** -- assault rifle.

4 **BY MR. BILKOVIC:**

5 **Q.** And is that one of the photographs that you observed when
6 he was scrolling through the phone?

7 **A.** Yes.

8 **Q.** Okay. Government's Proposed Exhibit 3, what is that?

9 **A.** That's Mr. Didani on top of a four-wheeler with a pistol
10 on his hip.

11 **Q.** And is that one of the photographs that you saw when
12 Agent Fuentes was scrolling through the phone?

13 **A.** Yes, sir.

14 **Q.** And Government's Proposed Exhibit 4, what is that?

15 **A.** Mr. Didani standing in a kitchen with a bunch of bulk
16 currency laid out in front of him.

17 **Q.** And is that a photograph that you observed scrolling
18 through the phone?

19 **A.** Yes, sir.

20 **Q.** You said that there's a bunch. Are there stacks there in
21 the photograph?

22 **A.** Yes.

23 **Q.** How many stacks are there?

24 **A.** Eight stacks.

25 **Q.** And how are they packaged or are they wrapped?

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1 A. Four are wrapped in 5,000 bundles, it appears, and
2 three in 10,000, and then the last one doesn't have --

3 MR. FINK: Your Honor?

4 THE COURT: Yes.

5 MR. FINK: May I voir dire as to exactly how he was
6 viewing these? Because he's describing these pictures, and I'm
7 not clear exactly how he could see that on the phone
8 necessarily. Could I ask a few questions?

9 THE COURT: Yes.

10 MR. FINK: Thank you, Your Honor.

11 - - -

12 VOIR DIRE EXAMINATION

13 BY MR. FINK:

14 Q. Agent Bianchi, you mentioned that these particular
15 pictures, correct me if I'm wrong, you viewed when they were
16 showed to you by my client on his cellular phone; correct?

17 A. No.

18 Q. Okay. Explain to me exactly when you saw these
19 photographs you are describing.

20 A. When Mr. Fuentes was scrolling through Mr. Didani's phone
21 at the airport, that is when I saw them.

22 Q. Okay. We may be speculating a little bit, but correct me
23 if I'm wrong, he went to his photographs on his cellular
24 device, his iPhone; correct?

25 A. I'm sorry?

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1 Q. He went to his photos on his iPhone -- correct? --

2 Mr. Fuentes?

3 A. I don't know if Mr. Fuentes did it or if Mr. Didani
4 already had it open.

5 Q. Sure, but it was in the photos app where you're scrolling
6 through to see all the photos. Is that accurate?

7 A. Yes.

8 Q. And there are thumbnails so you can see them all at once?

9 A. That's not how they were.

10 Q. How were they?

11 A. They were opened.

12 Q. They were opened to a large format?

13 A. Correct.

14 Q. And when you -- when you were scrolling, you indicated to
15 me -- I'm taking my finger and I'm going upwards. Do you see
16 what I'm doing?

17 A. Yes.

18 Q. Do you see what I'm doing right now?

19 A. I do see what you're doing.

20 Q. That's what you indicated to the judge just a moment
21 ago -- correct? -- you were scrolling like this?

22 A. No, and I wasn't doing it.

23 **MR. FINK:** Judge, I mean it was in open court that I
24 believe the witness was going like this on his phone. Judge,
25 if you remember differently, that's how I recall it, and I

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1 think that's important for the next question.

2 **BY MR. FINK:**

3 Q. But, nevertheless, you don't think you were going like
4 this with your finger; is that what you're saying now?

5 A. I do not, and I didn't scroll through the phone.
6 Mr. Fuentes did.

7 Q. Right. Just a moment ago, Agent Bianchi, you were asked
8 by Judge Hood about scrolling through the phone, and you made
9 an indication with your finger of how it was being scrolled
10 through. Do you recall that or not?

11 A. I do not.

12 Q. Okay. So you would concede to me that it's possible you
13 were going like this with your finger; correct?

14 A. I do not remember doing that.

15 Q. Okay. Are you familiar with an iPhone?

16 A. I am.

17 Q. Do you have one?

18 A. I do.

19 Q. Okay. When pictures are open to the large format on an
20 iPhone, you have to scroll through the picture from left to
21 right; is that correct?

22 A. Correct.

23 Q. Okay. So you couldn't scroll up to see more pictures if
24 they were in a large format. Is that accurate?

25 A. I guess it depends.

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1 Q. Well, I'm asking you: Is that accurate?

2 THE COURT: What's the last thing that you said?

3 THE WITNESS: It depends.

4 THE COURT: Okay.

5 BY MR. FINK:

6 Q. Do you know of any circumstance on an iPhone where you
7 have a large picture blown up on your phone, in your pictures
8 on your iPhone that you can scroll upwards?

9 A. Yes, sir.

10 Q. Give me an example of that, that you know of?

11 A. When you are in the messages app, if somebody sends you a
12 bunch of different messages and you are looking at the phone,
13 it really depends on the portrait --

14 Q. So were you looking through his text messages --

15 THE COURT: You cut him off so I couldn't hear his
16 whole answer.

17 MR. FINK: I'm so sorry, Judge. My apologies.

18 BY MR. FINK:

19 Q. Go ahead, Agent Bianchi.

20 A. It depends on which way you are holding the phone, sir.

21 Q. So you mentioned messages; correct?

22 A. Yes, sir.

23 Q. And messages, you can scroll through the messages in an
24 upward or downward direction; right?

25 A. Yes, sir.

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1 Q. So was Mr. Fuentes going through text messages, not
2 photographs?

3 A. No, sir.

4 Q. He was going through photographs?

5 A. Yes.

6 Q. Okay. So the messages example doesn't work. Can you
7 think of another time in an iPhone where you would scroll in an
8 upward/downward direction to view photographs in a large
9 format?

10 A. Yes, sir.

11 Q. Please share that with me.

12 A. When your screen lock is on.

13 Q. If the screen lock is on?

14 A. Yes, sir.

15 Q. So is it your position that Mr. Fuentes must have had the
16 screen lock on to go up and down in pictures?

17 A. I don't know.

18 Q. So, to be clear, the photographs were in a large format on
19 the cellphone -- correct? -- so that you could see one photo at
20 a time; is that accurate?

21 A. Yes, sir.

22 Q. And that Mr. Fuentes was scrolling through them. Is that
23 accurate?

24 A. Yes, sir.

25 Q. Does that mean that they were continually moving?

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1 A. No.

2 Q. Would he stop on certain pictures?

3 A. Yes, sir.

4 Q. And would he zoom in at all?

5 A. I don't recall, to be honest.

6 Q. How long would he stop on a picture at a given time to
7 view it?

8 A. I don't know.

9 Q. Seconds? More than that?

10 A. More than that, if it was substantial and he wanted to
11 make sure I was seeing it.

12 Q. It's your position you could see the \$5,000 bundling at
13 that time?

14 A. I could see those -- yes.

15 Q. And the details that you are describing to Mr. Bilkovic,
16 it's your position that you could see it that day on the phone?

17 THE COURT: This is getting towards cross-examination
18 I think, don't you?

19 MR. FINK: I do. That was any last question.

20 THE COURT: Okay.

21 MR. FINK: To be clear whether he could see from the
22 phone.

23 THE WITNESS: That there were actually \$5,000
24 bundles? Probably not. That there were stacks of cash? Yes.

25 MR. FINK: Okay. So the detail you were describing,

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1 that's what I was asking about.

2 Thank you, Judge, and thank you, Agent Bianchi.

3 **THE COURT:** Okay. We didn't see Exhibit 5.

4 **MR. BILKOVIC:** Right. We left off on 4; right?

5 **THE COURT:** Yes.

6 - - -

7 (11:05 a.m.)

8 **DIRECT EXAMINATION CONTINUED**

9 **BY MR. BILKOVIC:**

10 **Q.** Government's Proposed Exhibit 5, do you recognize that?

11 **A.** Yes, sir.

12 **Q.** And what is that?

13 **A.** It appears to be a large amount of currency wrapped in
14 what appears to be cellophane inside a black duffel bag.

15 **Q.** And, again, is that another photograph that you observed
16 when Agent Fuentes was scrolling through the phone?

17 **A.** Yes, sir.

18 **MR. BILKOVIC:** Your Honor, at this time for purposes
19 of this hearing the government would move to admit Government's
20 Proposed Exhibits 1 through 5.

21 **THE COURT:** Any objection?

22 **MR. FINK:** For purposes of the hearing, Judge, no
23 objection to the admission of exhibits. However, I would ask
24 that the testimony about the specificity of the \$5,000 band,
25 that testimony be stricken based on the voir dire.

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1 **THE COURT:** That the what?

2 **MR. FINK:** That the specifying of \$5,000 bands, that
3 detail be stricken given the voir dire that he couldn't observe
4 that on the phone at the time.

5 **MR. BILKOVIC:** Your Honor, the testimony is what it
6 is because there is going to be other reasons why those
7 photographs are relevant later on when he would have viewed
8 them in a different format.

9 **THE COURT:** Okay. I'm going to overrule the
10 objection.

11 **MR. FINK:** Thank you, Judge.

12 **MR. BILKOVIC:** Your Honor, may I retrieve the
13 exhibits and publish them to the Court?

14 **THE COURT:** Yes, you may.

15 **MR. BILKOVIC:** Thank you.

16 **THE COURT:** I have a question. On the extraction are
17 the photographs the same size they are on the telephone?

18 **THE WITNESS:** No, ma'am.

19 **THE COURT:** On the extraction they come out bigger?

20 **THE WITNESS:** They come out like you see in front of
21 you, ma'am.

22 **THE COURT:** They come out this size?

23 **THE WITNESS:** Yes, ma'am.

24 **THE COURT:** Okay. Go ahead.
25

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1 **BY MR. BILKOVIC:**

2 **Q.** And, just following up on what the Court asked, is that
3 because you are looking at those on a computer?

4 **A.** Yes.

5 **Q.** So a computer screen?

6 **A.** Yes, sir.

7 **THE COURT:** You have seen these photos?

8 **MR. FINK:** I have, Judge, and no objection for
9 purposes --

10 **THE COURT:** Do you have a copy of them?

11 **MR. FINK:** I do not.

12 **MR. BILKOVIC:** He has them in discovery, but I will
13 make copies today and I'll email them to Mr. Fink.

14 **MR. FINK:** I have no doubt. Thank you, Judge.

15 **THE COURT:** Okay. Thank you.

16 **BY MR. BILKOVIC:**

17 **Q.** Now I'm going to jump ahead to 2016, August of 2016. Were
18 you still conducting an investigation of Mr. Didani in this
19 matter?

20 **A.** Yes, sir.

21 **Q.** And was there still an alert on Mr. Didani for
22 international travel?

23 **A.** Yes, sir.

24 **Q.** And in August of 2016 did you receive any information with
25 respect to Mr. Didani?

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1 A. Yes, sir.

2 Q. What information was that?

3 A. That he was flying into the United States.

4 Q. And did you receive information as to where he was flying
5 into -- into the United States? What city?

6 A. Yes. Chicago again.

7 THE COURT: From where, if you know?

8 THE WITNESS: I -- I believe, if I recall correctly,
9 it was Rome. I think he was going Albania to Rome to Chicago
10 to Juarez, Mexico, to Mexico City.

11 BY MR. BILKOVIC:

12 Q. And one of those -- he was going to get to Mexico? The
13 reservations were through Chicago O'Hare to Mexico?

14 A. Yes, sir.

15 Q. And do you know whether Mr. Didani was traveling with
16 anybody?

17 A. What I knew at the time was there was nobody else on his
18 reservation list, but I did get alerted that Mr. Puzio was also
19 traveling to the same area out of Detroit.

20 Q. Traveling -- when you say "the same area," where?

21 A. Mexico City.

22 Q. The same day?

23 A. The same day.

24 Q. And what day was this that Mr. Didani was coming into
25 Chicago?

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1 A. August 6th.

2 Q. 2016?

3 A. Yes, sir.

4 Q. So when you received that alert, what did you do?

5 A. At the time I was on leave. I contacted an HSI agent in
6 Chicago O'Hare and requested Mr. Didani be interviewed again.

7 Q. And did you speak with anybody in Chicago?

8 A. I did.

9 Q. HSI agent in Chicago?

10 A. Yes, sir.

11 Q. Who did you speak with?

12 A. Mr. Nugent. HSI Agent -- Special Agent Nugent.

13 Q. And he's here today?

14 THE COURT: Special Agent?

15 THE WITNESS: Nugent.

16 THE COURT: Okay.

17 BY MR. BILKOVIC:

18 Q. N-u-g-e-n-t?

19 A. Yes, sir.

20 Q. He's here today?

21 A. Yes, sir.

22 Q. And did you provide Agent Nugent any information?

23 A. Yes, sir.

24 Q. And I don't want you to go through everything you provided
25 him, but did you give him a summary of your investigation?

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1 A. Yes, sir.

2 Q. And did you make any requests of him?

3 A. Yes, that he be searched and interviewed.

4 Q. That who be searched and interviewed?

5 A. Mr. Didani.

6 Q. And were you present at O'Hare on August 6, 2016?

7 A. No, sir.

8 Q. Did you receive information subsequently from Agent
9 Nugent?

10 A. Yes, sir.

11 Q. What information did you receive?

12 A. I received two cellphones, an iPhone and a Blackberry.

13 Q. And who were those cellphones taken from?

14 A. Mr. Didani.

15 Q. And did Mr. -- or did Agent Nugent provide you any details
16 about what occurred in Chicago?

17 A. Yes, sir.

18 Q. And what were -- if you could summarize those.

19 A. Basically that --

20 MR. FINK: Objection, Your Honor. I mean we have
21 Mr. Nugent here to describe the interview. I'm not sure that
22 this is the right witness for that. I understand, as we
23 discussed previously, maybe to inform what he does next, but it
24 might be more efficient to use Mr. Nugent as to what he asked
25 him in the interview.

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1 **THE COURT:** So is that objection efficiency?

2 **MR. FINK:** The objection is, Judge, it's hearsay, to
3 describe what Mr. Nugent told him.

4 **THE COURT:** Do you want to respond?

5 **MR. BILKOVIC:** It is hearsay. The reason I'm
6 offering it, if there is going to be later challenges or
7 challenges that there was not later reasonable suspicion to
8 search that phone or probable cause to search that phone it's
9 important for Agent Bianchi to testify what information he had.

10 **THE COURT:** Okay. Your objection is noted and
11 preserved for the record and overruled. I'm going to allow it
12 for that purpose only, not for the truth of the matter
13 asserted.

14 **MR. BILKOVIC:** Thank you, Your Honor.

15 **MR. FINK:** Thank you, Your Honor.

16 **BY MR. BILKOVIC:**

17 **Q.** And did you receive information when Mr. Didani was
18 interviewed?

19 **A.** I'm sorry?

20 **Q.** Did you receive information whether or not Mr. Didani was
21 interviewed?

22 **A.** Yes.

23 **Q.** I'm not going to go through that with you right now, but
24 did you receive -- you indicated the iPhone and Blackberry were
25 taken from him. Were you given information about anything else

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1 that was taken from Mr. Didani?

2 A. Yes, sir.

3 Q. And what was that?

4 A. Illegal steroids. HGH, I believe.

5 Q. Do you know the name specifically or no? If not, we can
6 get that --

7 A. I do know it. I just can't pronounce it. It's Kigtropin.

8 Q. Kigtropin?

9 A. Kigtropin.

10 Q. Do you know how to spell that or no? It's okay if you
11 don't.

12 A. No.

13 Q. And so this occurred on August 6, 2016?

14 A. Correct.

15 Q. And did you subsequently receive anything from HSI in
16 Chicago?

17 A. Yes, those two cellphones.

18 **MR. BILKOVIC:** May I approach, Your Honor?

19 **THE COURT:** Yes.

20 **BY MR. BILKOVIC:**

21 Q. I'm showing you what's been marked Government's Proposed
22 Exhibit 6. Do you recognize that?

23 A. I do.

24 Q. And what is that?

25 A. That is our chain of custody form.

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1 Q. And does your signature appear on that form?

2 A. It does.

3 Q. And what day did you sign that form?

4 A. I signed the form on August 15, 2016, or -- yes, and again
5 on August 26, 2016.

6 Q. When you signed it on August 15, 2016, why were you
7 signing that form?

8 A. Taking the phone into possession from another agent in my
9 office because I was on leave.

10 Q. Okay. So you were taking the phones, the iPhone and the
11 Blackberry?

12 A. I'm sorry?

13 Q. The iPhone and the Blackberry?

14 A. Yes, sir.

15 Q. So basically you took possession of those on August 15,
16 2016?

17 A. Yes, sir.

18 Q. And did you do any legal process with respect to those
19 phones?

20 A. Yes, sir.

21 Q. What did you do?

22 A. I ended up getting a search warrant.

23 Q. And where was that search warrant obtained?

24 A. With you, sir.

25 Q. What jurisdiction?

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1 A. The Eastern District of Michigan.

2 Q. And was that a search warrant to search both the iPhone
3 and the Blackberry?

4 A. Yes, sir.

5 Q. And do you recall when you obtained that search warrant?

6 A. I believe it was August 17th.

7 Q. Of 2016?

8 A. 2016. Two days later.

9 Q. Which would have been approximately 11 days after the
10 phones came into HSI possession in Chicago?

11 A. Yes, sir.

12 Q. And at the time I think you said you were acting basically
13 as an HSI TFO, and this was an HSI investigation?

14 A. Yes, sir.

15 Q. Are you familiar -- and is HSI a branch of -- I think you
16 already testified -- ICE?

17 A. Yes.

18 Q. Are you familiar with what the policy was in place at the
19 time for retention of electronic devices -- ICE policy for
20 retention of electronic devices at the border?

21 A. Yes.

22 Q. And what was that?

23 A. 30 days.

24 THE COURT: Okay. Now, does that mean that you could
25 retain them for 30 days, then you had to return them to the

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1 owner?

2 **THE WITNESS:** It depended on the matter, ma'am.

3 **THE COURT:** Okay. Well, then what does it mean, the
4 policy?

5 **THE WITNESS:** What does the --

6 **THE COURT:** What is the policy?

7 **THE WITNESS:** The policy is on a border search when
8 you are given a device from CBP that you have 30 days to
9 determine what you are going to do with that device.

10 **THE COURT:** Okay.

11 **BY MR. BILKOVIC:**

12 **Q.** And is it fair to say that if you want to keep it for
13 longer than that there is a procedure you have to go through?

14 **A.** There is.

15 **Q.** In this case within those 30 days you obtained a search
16 warrant?

17 **A.** I did.

18 **Q.** I had asked you earlier about the year that the incidents
19 involving Mr. Hussein with money at the United States/Canadian
20 border was, and you indicated you did not recall the date. If
21 I showed you your report, do you think that would refresh your
22 memory?

23 **A.** Yes, sir.

24 **MR. BILKOVIC:** May I approach, Your Honor?

25 **THE COURT:** Yes. And this is recalling the day of?

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1 **MR. BILKOVIC:** The day -- the time frame to when
2 Mr. Didani testified that Mr. Hussein was -- there was
3 information he received about Mr. Hussein having large amounts
4 of cash at the United States/Canadian border.

5 **BY MR. BILKOVIC:**

6 Q. And do you recall the year that that took place?

7 A. Yes, sir.

8 Q. And when was that?

9 A. 2008.

10 Q. And you also described the incident about the vehicle that
11 was registered to Mr. Hussein that was pulling the boat that
12 the Coast Guard attempted interdiction of, and you did not
13 recall the date on that?

14 A. Correct.

15 Q. If I showed you a copy of your report, would that refresh
16 your memory?

17 A. Yes, sir.

18 Q. I'm showing you a copy of your report dated July 29, 2015.
19 Does that refresh your memory on the date that that incident
20 occurred?

21 A. Yes.

22 Q. And when was that?

23 A. On July of 2019.

24 Q. July what?

25 A. July 1st.

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1 MR. BILKOVIC: May I have one moment, Your Honor?

2 THE COURT: Yes, you may.

3 **MR. BILKOVIC:** Your Honor, I have no further
4 questions at this time.

5 **THE COURT:** Okay. Do you want to examine this
6 witness?

7 || **MR. FINK:** I do, Your Honor.

8 THE COURT: Okay. You may.

9 || - - -

10 (11:18 a.m.)

11 CROSS-EXAMINATION

12 BY MR. FINK:

13 Q. Agent Bianchi, good morning. My name is Wade Fink. I
14 represent Mr. Didani. I think this is the first time we're
15 meeting. It's nice to meet you.

16 **A.** Nice to meet you.

17 Q. Agent, in my cross-examination I'm going to -- I'll let
18 you know I'm going to be referring to certain reports and
19 documents. To the extent you want to see them or what I'm
20 relying on or refresh your recollection, I have copies so
21 please ask me, but when I mention them, that's what I'm
22 referring to.

23 So, again, I'm going to ask you by memory, and please let
24 me know if you need to look at your report, but do you recall
25 writing a -- what you titled a "Didani, et al. Opening Report"

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1 in this case?

2 A. I'd have to look at the report.

3 MR. FINK: Judge, may I approach?

4 THE COURT: Yes.

5 MR. BILKOVIC: Wade, is the date February 9, '15?

6 MR. FINK: Yes.

7 MR. BILKOVIC: Thanks.

8 THE COURT: You can pass it to Ms. Daley, and she can
9 pass it to me.

10 Any objection to me having it?

11 MR. BILKOVIC: No, Your Honor.

12 THE COURT: Okay.

13 BY MR. FINK:

14 Q. Agent Bianchi, does looking at your report generally
15 refresh your recollection as to what I'm referring to?

16 A. Yes, sir.

17 Q. Okay. Do you recall now writing a report entitled "Didani
18 Opening Report"?

19 A. Yes, sir.

20 Q. And this was on February 9th of 2015; correct?

21 A. Yes, sir.

22 Q. Okay. And to the best of your recollection is this the
23 first mention in any of your reports of Ylli Didani? Your
24 reports that you authored, I should specify.

25 A. Of my reports?

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1 Q. Correct.

2 A. I don't know that he's listed in this report, sir.

3 Q. Well, on the title "Didani Opening Report"?

4 A. Okay.

5 Q. To the best of your knowledge, is this the first report
6 that you mentioned Ylli Didani in a report that you authored?

7 A. I would say.

8 Q. Okay. And in the report you mention that the genesis of
9 this investigation is possible smuggling of marijuana between
10 the United States and Canada and possible money laundering; is
11 that correct?

12 A. Yes, sir.

13 Q. And it describes -- you described this on direct
14 examination. It describes a tip that came in to HSI and you
15 about two other individuals and their activities in
16 St. Clair Shores, Michigan. Is that generally accurate?

17 A. Generally.

18 Q. In this report, other than in the title, is Ylli Didani's
19 name mentioned anywhere in this report?

20 A. No, sir.

21 Q. So "Didani's Opening Report" has nothing to do with
22 Ylli Didani. Is that accurate?

23 A. That is correct.

24 Q. Okay. You mentioned in direct examination, and the
25 government writes in their brief as well, that you had

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1 information that you relied upon, perhaps not only this report,
2 but going forward as you described, that there was information
3 about Ylli Didani dating back to 2008. Do you recall that?

4 A. I do.

5 Q. And this also -- this report also mentioned an
6 investigation about drug smuggling between Canada and the U.S.
7 and money laundering; is that correct?

8 A. That is correct.

9 MR. BILKOVIC: Wade, if you give me the dates, that's
10 all I need. They should be in the bottom right.

11 MR. FINK: June 2, 2008.

12 MR. BILKOVIC: Thank you.

13 BY MR. FINK:

14 Q. And this report from 2008, which you said on direct
15 examination that you relied upon in investigating Mr. Didani,
16 there is mention of a criminal informant discussing that
17 Mr. Didani was involved in some sort of criminal activity;
18 correct?

19 A. I would have to see the report.

20 MR. FINK: Sure.

21 Judge, may I approach?

22 THE COURT: You may, and this is 6/2/2008?

23 MR. FINK: Yes. This report is dated June 2nd, 2008,
24 Your Honor.

25 THE COURT: Okay.

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1 **MR. FINK:** A report on Department of Homeland
2 Security's letterhead.

3 **BY MR. FINK:**

4 **Q.** For your recollection purposes, Agent, I would refer you
5 to Page 5, the bottom of Page 5 is the first mention of
6 Mr. Didani. Let me know when you have adequately refreshed
7 your recollection.

8 **THE COURT:** Is that the last page of the report?

9 **MR. FINK:** I believe it's the second to the last,
10 Your Honor. Let me see.

11 Page 5 of 5 is the last page, yes.

12 **BY MR. FINK:**

13 **Q.** Have you refreshed your recollection, Agent Bianchi?

14 **A.** As far as what?

15 **Q.** Well, the question was: Do you recall this 2008
16 information that you mentioned in direct information as
17 informing the basis for future investigation a confidential
18 criminal informant mentions Ylli Didani in this 2008 report; is
19 that correct?

20 **A.** Yes, sir.

21 **Q.** Okay. And, without saying, do you know who that informant
22 is?

23 **A.** No.

24 **Q.** Did you look into the informant's background at all?

25 **A.** No.

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1 Q. Do you know anything about the informant's voracity, their
2 character for telling truthfulness?

3 A. No.

4 Q. So you really don't know anything about this other than
5 what's written in this report; correct?

6 A. Correct.

7 Q. You mentioned on direct examination that it was your
8 belief that in 2008 Mr. Didani was outside of prison; is that
9 correct?

10 A. Correct.

11 Q. He was not incarcerated at the time?

12 A. Correct.

13 Q. Okay. And if court records from Wayne County and Oakland
14 County show that he was in prison, would you change your
15 opinion?

16 A. As far as what?

17 Q. Whether he was incarcerated or not?

18 A. I don't know that I would.

19 Q. Are you certain that he wasn't incarcerated during that
20 time?

21 **MR. BILKOVIC:** Are we talking about a specific date
22 in 2008 or are we talking about the entire year?

23 **BY MR. FINK:**

24 Q. The entire year of 2008 are you certain that he wasn't
25 incarcerated?

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1 A. According to the MDOC records that I looked at, he was
2 not.

3 Q. Okay. Did you -- to the best of your knowledge, do you
4 know if you produced those MDOC records to Mr. Bilkovic or
5 myself?

6 A. I --

7 Q. And if you don't remember, I'm just asking if you remember
8 producing that report to the government or myself.

9 A. I don't recall.

10 Q. Okay. So, Agent Bianchi, the genesis, so to speak, of
11 your investigation of Mr. Didani you discussed on direct exam,
12 correct me if I'm wrong, began with your suspicions of a
13 gentleman named Eric Puzio. Is that accurate?

14 A. Yes.

15 Q. And the connections with Eric Puzio also led you to
16 connections with a gentleman you also described,
17 Hussein Hussein; correct?

18 A. Yes.

19 Q. That's what led you, together with this 2008 report that
20 we just discussed, to write the "Didani Opening Report" in
21 February 2015?

22 A. Yes.

23 Q. Were you the agent who started an investigation
24 specifically into Ylli Didani? Was that your proposal?

25 A. Yes.

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1 Q. Okay. And so those questions were designed to ask you
2 that. The things that I described in 2008, Eric Puzio and
3 Hussein Hussein, were the bases for opening that investigation?

4 A. There were lots of things.

5 Q. Okay. What else was there beside those three things that
6 I mentioned that you discussed on direct examination that led
7 you to write the opening report in February of 2015?

8 A. His travel history that we went over.

9 Q. Well, let me ask you about that. So you wrote a report on
10 suspicious travel history for Didani and Eric Puzio. I'm sure
11 you remember writing -- maybe not the date -- but writing that
12 report; correct?

13 A. Yes, sir.

14 Q. That report was written in July of 2015; do you recall
15 that?

16 A. Yes, sir.

17 Q. Okay. That's six months after you opened the Didani case;
18 right?

19 A. Okay.

20 Q. So I'm asking you what predated your opening report
21 February of 2019. Besides the 2008 information and the
22 connections to Eric Puzio and Hussein Hussein, is there any
23 other suspicions or evidence that you had to open an
24 investigation on Mr. Didani?

25 A. No.

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1 Q. Those three things were the basis to open the
2 investigation; correct?

3 A. Yes, sir.

4 Q. Okay. That's what I was asking --

5 THE COURT: What are you claiming they are again,
6 counsel?

7 MR. FINK: I'm sorry, Judge?

8 THE COURT: What are you claiming they are again?

9 MR. FINK: The three things?

10 THE COURT: Yes.

11 MR. FINK: The notation in the 2008 report that was
12 discussed, the connection to Eric Puzio discussed on direct
13 examination, and the connection to Hussein Hussein discussed on
14 direct examination.

15 THE COURT: Okay. Do you agree with that, sir?

16 THE WITNESS: Yes.

17 THE COURT: Okay.

18 BY MR. FINK:

19 Q. That led to -- so where we left off, Agent, is that led to
20 the February of 2015 report. Then, as I alluded to, in July,
21 specifically July 22nd of 2015, you wrote a report titled,
22 "Suspicious Travel - Didani and Puzio." Do you recall that?

23 A. Somewhat. I would love to see it.

24 MR. FINK: I'll approach with it if the judge allows
25 me.

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1 **THE COURT:** You may.

2 **MR. FINK:** Thank you, Judge.

3 **BY MR. FINK:**

4 **Q.** Now, does that generally refresh your recollection about
5 writing this report?

6 **A.** Yes, sir.

7 **Q.** Agent, you wrote this report about suspicious travel on
8 July 22, 2015; correct?

9 **A.** Yes, sir.

10 **Q.** That's about eight days before Didani -- Mr. Didani, the
11 defendant, was stopped for the first time at the Chicago
12 airport; correct?

13 **A.** Approximately, yes, sir.

14 **Q.** Okay. And if you look at the first sentence of that
15 report, it's similar to the other reports, in that it describes
16 the investigation related to the smuggling of marijuana between
17 the United States and Canada and possible money laundering;
18 correct?

19 **A.** Correct.

20 **Q.** This report discusses at length a lot of information that
21 you had on Eric Puzio; correct?

22 **A.** Okay.

23 **Q.** You mentioned that Poland --

24 Well, do you agree with that? This report discusses quite
25 a bit about Eric Puzio?

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1 A. Sure, yes.

2 Q. Poland, the country of Poland had an open investigation
3 against Puzio, you write; correct?

4 A. Yes.

5 Q. There's nothing in the report to suggest that Poland had
6 an open investigation against Didani, was there?

7 A. Can you restate that?

8 Q. There's nothing -- no reason to believe in this report or
9 otherwise that Poland had an investigation against Ylli Didani;
10 correct?

11 A. I don't know. I would have to reread my report.

12 Q. Sure, go ahead.

13 A. Is there anywhere in particular you want me to read?

14 Q. I'm just asking for your memory, Agent Bianchi. Whether
15 in this report or otherwise, do you know of any active
16 investigations by Poland against Ylli Didani?

17 A. I know in law enforcement databases that, yes.

18 Q. That Poland had an investigation against Didani?

19 A. Or at least somebody stated that, yes.

20 Q. Okay. But you didn't write it in this report; correct?

21 A. I don't know. I would have to reread my report.

22 Q. Go ahead.

23 A. Okay. Go ahead.

24 Q. You mentioned that Poland had an open investigation
25 against Eric Puzio; right?

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1 A. It does mention that?

2 Q. Yes.

3 A. I did not see that unless I'm ...

4 Q. If you look at -- on Page 1501 is the Bates stamp;
5 correct?

6 A. Right.

7 Q. The third paragraph, "Poland authorities have had previous
8 armed drug trafficking cases open on Eric Puzio."

9 THE COURT: Walk up and point it out, please.

10 THE WITNESS: Yes, I see it.

11 THE COURT: You see it?

12 THE WITNESS: Yes.

13 THE COURT: Okay.

14 THE WITNESS: It's right above the redacted.

15 BY MR. FINK:

16 Q. But my question to you was: It's related to Eric Puzio,
17 there's no investigation as to Ylli Didani; is that correct?

18 A. That is correct.

19 Q. You discuss Eric Puzio's brother being denied entry into
20 the United States. Do you see that in your report?

21 A. Yes, sir.

22 Q. You discuss that Eric Puzio being released from prison in
23 2013, that's when his suspicious travel started. Do you recall
24 that?

25 A. Yes, sir.

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1 Q. You said he started traveling and buying things, and that
2 raised your suspicions. Is that accurate?

3 A. Yes.

4 Q. Do you know if Eric Puzio was on parole in the year of
5 2014?

6 A. To the best of my recollection, he was not.

7 Q. Okay. Do you know parole conditions generally when
8 someone is on parole?

9 A. No, sir.

10 Q. Do you know that parole requires permission to travel?

11 A. Okay.

12 Q. If you don't know, it's okay --

13 A. No.

14 Q. -- you just say you don't know.

15 Okay. So I would assume you don't know if he asked a
16 parole agent of any kind to travel, and you don't know the
17 answer to that?

18 A. Correct. But -- okay.

19 Q. And after stating these suspicions that you had about
20 Eric Puzio in July of 2015, it's his -- it's Ylli Didani's
21 connection to Mr. Puzio that raises your suspicions about
22 him -- is that accurate? -- about Didani?

23 A. Can you rephrase that?

24 Q. Sure. Your suspicions about my client, Ylli Didani, were
25 raised in this report -- your suspicions were heightened by his

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1 connection to Eric Puzio. Is that accurate?

2 A. Yes, sir.

3 Q. Okay. In fact, that's what you lay out in your report.

4 You have a lot of suspicious activity of Mr. Puzio, and

5 Didani's association and travel with him made you suspicious;

6 is that correct?

7 A. Yes, sir.

8 Q. So what we discussed pre-opening report in February 2015

9 and now supplementing with this report in July of 2015, we're

10 now adding to your suspicions on top of what we discussed prior

11 the association with Eric Puzio and the travel with Eric Puzio.

12 Is that a fair characterization of the building evidence

13 against Mr. Didani?

14 A. I guess I'm not understanding what you're saying.

15 Q. So we agree that there was three basic categories of

16 suspicion when you opened the case against Mr. Didani; right?

17 A. Yes.

18 Q. You recall those three we discussed?

19 A. Yep.

20 Q. Six months later you write another report, in July, eight

21 days before Mr. Didani's arrest -- or is stopped at the border;

22 correct?

23 A. Yes.

24 Q. What this report adds to your evidence or suspicions

25 against Mr. Didani, what it adds to this conversation is his

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1 connection to Eric Puzio and his travel with Eric Puzio; is
2 that correct?

3 A. Yes, sir.

4 Q. So we have added that on to your list of suspicions;
5 right?

6 A. Yes, sir.

7 Q. And that leads us to a report that you wrote seven days
8 later, on July 29th, 2015, which I suspect you'll want to see
9 if I'm going to rely on it; correct?

10 A. Please.

11 MR. FINK: Judge, may I?

12 THE COURT: You may.

13 MR. FINK: July 29, '15, 1671.

14 BY MR. FINK:

15 Q. You wrote a report, Agent Bianchi, titled, "Background
16 on Hussein and Didani" that's dated July 29, 2015; is that
17 correct?

18 A. Yes, sir.

19 Q. And this was seven days after the report we just talked
20 about with Eric Puzio; correct?

21 A. It appears, yes.

22 Q. And that's one day before Didani is stopped for the first
23 time in 2015 at O'Hare Airport; correct?

24 A. Yes, sir.

25 Q. Once again, I refer you to the first sentence, which

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1 describes the general nature of the investigation, and it again
2 says, "Possible smuggling of marijuana between the
3 United States and Canada and possible money laundering." Is
4 that accurate?

5 A. Yes, sir.

6 Q. What this report adds and this information adds, correct
7 me if I'm wrong, Agent Bianchi, is that the man you discussed
8 on direct examination, Hussein Hussein, made travel
9 reservations for both Eric Puzio and my client, Didani, to go
10 to Columbia and Albania; is that correct?

11 A. I believe so.

12 Q. Among other things, that's one of the things that's added
13 in this report; correct?

14 A. Yes.

15 Q. And you had suspicions of Mr. Hussein given his prior
16 arrests and some other background information that you
17 discussed on direct examination. Is that accurate?

18 A. Yes, sir.

19 Q. So you are clearly also suspicious of Mr. Hussein; right?

20 A. Yes, sir.

21 Q. Mr. Hussein, to be clear, while there is mention of
22 investigations and arrests, was never convicted of any crime.
23 Is that accurate?

24 A. I do not know.

25 Q. Did you know at the time? And you can refer to your

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1 report if you want, but I would tell you that there's nothing
2 in there about a conviction, but I'm asking you if you knew
3 that at the time.

4 A. If it says that in there, then I stand by my report.

5 Q. No, I didn't mean to say that. It doesn't say it. I'm
6 saying do you know of any conviction that Mr. Hussein had in
7 his past at the time you wrote this report, and you can take
8 your time to look at it.

9 A. I do not.

10 Q. But the suspicions you did have were the arrest and also
11 you make mention of the currency he had on him at the Canadian
12 border; is that correct?

13 A. Yes, sir.

14 Q. I believe on direct examination you said it was a large
15 amount of currency; correct?

16 A. Yes, sir.

17 Q. Okay. And you also said in your report, and feel free to
18 refresh your recollection, if necessary, do you recall saying
19 that Mr. Hussein lied about the amount of currency he had
20 coming over the Canadian border into the United States? Do you
21 recall that?

22 A. I do not recall him lying. I recall him claiming that he
23 had a different amount than he actually had.

24 Q. The suggestion, in mentioning that, Agent Bianchi, is that
25 it might be deceptive; right?

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1 A. Correct.

2 Q. And the amount that he said he had was \$8,900; correct?

3 A. Yes, sir.

4 Q. But he really had \$9901; right?

5 A. Yes, sir.

6 Q. \$1,000 off; correct?

7 A. Yes.

8 Q. And he said he was coming from the casino; is that

9 accurate?

10 A. I believe so.

11 Q. The Windsor Casino. Is that accurate?

12 A. Yep.

13 Q. We have the February report and now two July reports, and

14 what we have added to your suspicions of Ylli Didani in these

15 reports is that Mr. Hussein, and your suspicions of

16 Mr. Hussein, having booked flights for Ylli Didani, continued

17 to raise your suspicions about my client, Mr. Didani. Is that

18 accurate?

19 A. Yes.

20 Q. In fact, it was after this report, so presumably with that

21 information, that's what led you to put a hit -- a travel hit

22 on Ylli Didani to notify you when he was traveling into the

23 country. Is that accurate?

24 A. I do not recall if that's when I did it.

25 Q. Did you write in the report, "A silent hit has been put on

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1 Didani in order for him to be interviewed and searched
2 thoroughly upon his eventual return into the United States"?

3 A. Yes.

4 Q. You did write that; correct?

5 A. Yes, sir.

6 Q. And presumably, writing it in this report, it was with the
7 evidence that you had at the time that you felt that that was
8 justified; correct?

9 A. Yes, sir.

10 Q. I want to add that also in this report there is discussion
11 of -- related to Mr. Hussein, an interdiction by the U.S.
12 Coast Guard, I believe, on the Detroit River; do you recall
13 that?

14 A. I do, sir.

15 Q. Belle Isle Coast Guard?

16 A. Yes, sir.

17 Q. Mr. Didani was not found to be involved or on that boat as
18 far as you know; correct?

19 A. Correct.

20 Q. In fact, I think there's a couple mentions, and perhaps in
21 other reports in later years, of background information about
22 boats and possible smuggling from Canada to Michigan, but you
23 have no evidence to suggest that Mr. Didani was ever spotted on
24 any of these boats or jet skis; correct?

25 A. That is correct.

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1 Q. So the next day, July 30, 2015, is the day that Mr. Didani
2 flew into the Chicago airport; is that correct?

3 A. Yes, sir.

4 Q. From Albania?

5 A. Yes, sir.

6 Q. And you were there to meet him at the plane. Is that
7 accurate?

8 A. No.

9 Q. You were not there to meet him at the plane?

10 A. No, sir.

11 Q. You weren't standing in the front area where people
12 deplane when Mr. Didani walked out with his 19-year-old girl
13 friend?

14 A. No, sir.

15 Q. Do you know if anyone was standing there to meet him at
16 the plane?

17 A. I assume the Customs officer that brought him to secondary
18 where I was standing.

19 Q. You didn't shake his hand and introduce yourself right at
20 the plane?

21 A. I did not.

22 Q. On -- just a moment. I have got to find the right report,
23 Agent. One second.

24 MR. FINK: I'm sorry, Judge. One moment.

25 Judge, I apologize, and thank you to the government for

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1 providing me with the document. I only have one copy so I'm
2 going to pull it up on my computer.

3 **BY MR. FINK:**

4 Q. Agent Bianchi, I'm going to approach with a July -- well,
5 it's an August 13, 2015, report written about the
6 July 30th encounter.

7 **MR. FINK:** May I approach, Judge?

8 **THE COURT:** You may.

9 **BY MR. FINK:**

10 Q. So we were talking about July 30, 2015. Mr. Didani is
11 detained at the border when he flies into O'Hare, Chicago
12 airport; correct?

13 A. Yes.

14 Q. Now, you've been employed at Border Patrol, I think you
15 said, since 2003 in various capacities?

16 A. Yes, sir.

17 Q. You have experience with how the computer systems work,
18 how flags happen, and what an agent does when a certain person
19 has his -- is flagged for interview?

20 A. Actually, no.

21 Q. Okay. Well, do you have any understanding when you put --
22 you said you put a hit, a silent hit so that he would be
23 stopped. Who sees that, and what happens when you put that hit
24 into the ether; do you know?

25 A. Yes.

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1 Q. Okay. Tell me basically, and the judge, exactly what
2 happens when there is a flag for a person traveling into the
3 United States.

4 A. In my situation I would receive an email.

5 Q. Okay.

6 A. Stating that this person made reservations to fly into
7 yada yada yada, in this case Chicago O'Hare.

8 Q. So you would receive some sort of notification on this hit
9 that Mr. Didani was coming into the United States; right?

10 A. Yes, sir.

11 Q. And then you would communicate with the airport at which
12 he was arriving?

13 A. Yes, sir.

14 Q. Okay. So in this instance, when you got information that
15 Mr. Didani would be entering the United States on July 30 of
16 2015, you communicated that to some official at the O'Hare
17 airport; correct?

18 A. Yes, sir, Customs.

19 Q. Do you recall what you said or, if not, generically what
20 you would say in a situation like that?

21 A. I don't. I called and spoke to the supervisor over there
22 at Chicago O'Hare and requested -- and asked for permission if
23 it was okay if I was involved in an interview of Mr. Didani,
24 who there was an alert on to be interviewed and was flying in
25 later on that evening.

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1 Q. And when you make that call are you -- is that -- are you
2 asking another Customs and Border Patrol supervisor or agent
3 for that courtesy? Is that what you're doing?

4 A. Yes, sir. It's a different agency.

5 Q. But it is Customs and Border Patrol generally; right?

6 A. Yes.

7 Q. You are asking for their cooperation or giving them a
8 heads up that you will be coming in?

9 A. Yes, sir.

10 Q. So as far as you recall -- well, as far as you know, the
11 people that greeted Mr. Didani at the airplane were members of
12 Customs and Border Patrol?

13 A. Yes, sir.

14 Q. And they escorted him where, if you recall?

15 A. To where myself and Mr. Fuentes was, which I believe to be
16 the secondary.

17 Q. Okay. Can you describe the secondary situation, what it
18 looks like. If I'm just a stranger being walked into
19 secondary, what am I seeing?

20 A. To the best of my recollection --

21 Q. Yeah, of course, to the best of your recollection.

22 A. There is a -- it almost looks like a podium like what you
23 are standing up against, and there is a table next to it where
24 they can put their luggage on and what not, and stuff can be
25 searched there, I would assume, and there was multiple podiums

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1 like that.

2 Q. Is it like sectioned off from the public or is it in full
3 view of the public?

4 A. It's international travel so it's sectioned off.

5 Q. So when you enter in secondary, it's private? Private in
6 the sense that general members of the public can't see what's
7 going on in this area?

8 A. Correct.

9 Q. Is that accurate?

10 A. Yes.

11 Q. Okay. So inside this secondary room, to the best of your
12 recollection, is yourself, Ylli Didani and who?

13 A. Mr. Fuentes, who conducted the interview, and the -- I do
14 not remember his name -- the other CBP agent that escorted
15 Mr. Didani over to us.

16 Q. Okay. So two CBP agents, you, and Mr. Didani are in the
17 secondary room. Is that is an accurate description?

18 A. And there was lots of people in the room.

19 Q. Okay. So there are other people that are going through
20 secondary; is that what you're saying?

21 A. Yes, sir.

22 Q. Okay. So there are other folks that are being interviewed
23 or whatever pursuant to whatever reason they may be in
24 secondary, along with you and the folks that you described. Is
25 that accurate?

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1 A. Yes, sir.

2 Q. Okay. Did Mr. Didani have -- was he traveling with
3 anyone?

4 A. To my knowledge, I don't know.

5 Q. Did he have any bags on his person, any carry-on luggage?

6 A. Yes, sir.

7 Q. Do you recall what it was?

8 A. I don't.

9 Q. Backpack?

10 A. I don't.

11 Q. Okay. But it was a bag of some kind?

12 A. I don't know. I don't remember.

13 Q. Do you remember if he had any luggage at all?

14 A. I do not.

15 Q. You don't remember, not that he didn't?

16 A. Correct. I do not remember.

17 Q. You authored a report about this interaction that you just
18 described on August 13 of 2015; is that correct?

19 A. Yes, sir.

20 Q. And that report is entitled "Interview of Didani" on
21 July 30, 2015. Accurate?

22 A. Yes, sir.

23 Q. Now, I want to call your attention to the first paragraph
24 of that report. I have been asking you about that in prior
25 reports. Do you recall me asking about the first sentence?

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1 A. Yes, sir.

2 Q. The first sentence of this report ends with "This
3 investigation concerns information regarding possible smuggling
4 of steroids, contraband, vehicles, possible counterfeit money,
5 and money laundering." Is that accurately read?

6 A. Yes, sir.

7 Q. Now, a couple weeks prior, in the report we read from
8 July 29 and in the report we read July 22nd and in the report
9 that we read February 9, the first sentence makes no mention of
10 smuggling of steroids, contraband, counterfeit money, vehicles;
11 is that correct? You can refer back, of course, if you need
12 to.

13 A. The other reports do say money laundering.

14 Q. They say money laundering -- correct? -- but there's no
15 mention of smuggling of steroids; correct?

16 A. No steroids.

17 Q. There's no mention of contraband in that first sentence in
18 those other reports; correct?

19 A. I would consider --

20 Q. The word "contraband."

21 A. Okay. Marijuana is contraband though.

22 Q. Is the word "contraband" mentioned?

23 A. No.

24 Q. Is the word "vehicles" mentioned?

25 A. Vehicles?

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1 Q. Correct.

2 A. No.

3 Q. Nor is the phrase "possible counterfeit money" mentioned
4 in those prior reports; correct?

5 A. Correct.

6 Q. All the way up until July 29th, the day before you
7 interviewed Didani, the investigation was about smuggling
8 marijuana from Canada to the United States and money
9 laundering; correct?

10 A. Correct.

11 Q. What changed that this report two weeks later is now far
12 more expansive in scope?

13 A. That would be his cellphone.

14 Q. So between the time --

15 THE COURT: I'm sorry, that would be his what?

16 THE WITNESS: His cellphone.

17 THE COURT: Okay.

18 BY MR. FINK:

19 Q. So from the time of July 29th to August 13th, 2015, the
20 contents of his cellphone changed your investigation from
21 marijuana smuggling from Canada to the United States to an
22 investigation about possible steroids, contraband, vehicles and
23 counterfeit money, in addition to the other things you had
24 already been investigating; correct?

25 A. Correct.

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1 Q. What evidence on the phones, and you discussed them on --
2 we'll discuss this in more detail, but you discussed on direct
3 examination some pictures you observed and other things. What
4 evidence of these new -- these new allegations were found on
5 the phones?

6 A. New allegations -- could you rephrase?

7 Q. Well, you said the phones made you change this
8 investigation to include smuggling of steroids; correct?

9 A. Just to include it, yes.

10 Q. Right, but what made you include that as a possible
11 investigation point? What changed?

12 A. Photos of steroids.

13 Q. You saw steroids on his phone?

14 A. Yes. Well, what I thought was.

15 Q. Help me explain what they look like, those pictures.

16 A. I would have to see the pictures.

17 Q. Do you have those pictures?

18 A. On me? No.

19 Q. Do they exist?

20 A. Yes.

21 Q. Okay. But you can't describe what they look like?

22 A. No.

23 Q. You don't remember?

24 A. No.

25 Q. Well, what would you think a steroid would look like?

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1 A. Vials.

2 Q. A vial means it's steroids?

3 A. No, not necessarily.

4 Q. Did you see vials in these pictures?

5 A. I did.

6 Q. I thought you didn't remember.

7 A. I don't.

8 Q. Now you do remember that it was vials that you saw in
9 these pictures?

10 A. Yes.

11 Q. Anything else?

12 A. No.

13 Q. You said you added the word "vehicles" to your
14 investigation. What about vehicles changed in your view of
15 Mr. Didani's cellphone?

16 A. What do you mean?

17 Q. Well, did you see a picture of a car and you thought it
18 was illegal for some reason? What led you to the suspicion
19 that vehicles should be part of your investigation?

20 A. Yes, pictures of multiple cars, high-end cars, and also
21 titles of other people that are not in.

22 Q. Well, I mean what were your suspicions specifically about
23 seeing expensive cars?

24 A. Just the way they were torn up and -- and what not, carpet
25 being ripped up out of them. I didn't know. Just suspicions.

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1 Q. So you were suspicious of photographs you saw from his
2 phone of cars that were torn up, you said, in some fashion --
3 right? -- or altered?

4 A. Correct.

5 Q. Okay. Did you recall saying this on direct examination at
6 all?

7 A. Saying what?

8 Q. Anything about seeing these pictures. When you were asked
9 about what you saw on his phones, you didn't mention any of
10 this; right?

11 A. About the vehicles?

12 Q. Right.

13 A. No, I did not.

14 Q. You didn't mention anything about steroids either; right?

15 A. Correct.

16 Q. Do you recall seeing the pictures of the alleged vials and
17 the vehicles, did you see that when Mr. Fuentes was scrolling
18 through on the phone?

19 A. I don't recall.

20 Q. Or did you see them after when the phone was imaged and
21 you looked at the images?

22 A. I don't recall.

23 Q. It could be either?

24 A. It could be.

25 Q. Because you looked at pictures that were extracted from

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1 the phone; correct?

2 A. Yes, sir.

3 Q. So it could have been that you saw these pictures later?

4 A. Yes.

5 Q. And maybe that's why you added it to the report?

6 A. Maybe what?

7 Q. Maybe that's why you expanded the scope of your
8 investigation by saying smuggling of steroids, perhaps you saw
9 these pictures afterwards?

10 A. Okay.

11 Q. I'm asking. Is that possible?

12 A. It is possible.

13 **THE COURT:** And by "afterwards," you mean after the
14 scrolling through?

15 **MR. FINK:** Yeah. Thank you, Judge. To be more
16 precise -- I appreciate that, Your Honor.

17 **BY MR. FINK:**

18 Q. After the scrolling by Mr. Fuentes, you said in order to
19 facilitate a connecting flight that you thought it would be
20 more expedient to just image the phone. Do you recall that?

21 A. Yes.

22 Q. What does it mean to image a phone?

23 A. Basically we produce a copy of what's on the phone onto an
24 another media device that you can look at.

25 Q. Basically just take all the data and make a copy of it so

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1 it's preserved; right?

2 A. Yes, sir.

3 Q. So you have an exact, mirror image of what that phone
4 looked like at that time, at that place; right?

5 A. Yes, sir.

6 Q. And that's what you did?

7 A. Well, I didn't.

8 Q. Well, to your knowledge that's what -- you asked CBP to
9 do?

10 A. Yes, sir.

11 Q. And presumably they did it because you looked at images
12 later after the fact; correct?

13 A. Yes.

14 Q. When I say "after the fact," to be more precise, after the
15 encounter at O'Hare in your office later you were able to view
16 contents of the phone?

17 A. That is correct.

18 Q. Okay. Agent Bianchi, you wrote this report on August 13,
19 2015, about two weeks after the encounter -- correct? -- that's
20 in front of you?

21 A. Yes.

22 Q. Okay. And this is -- we have just discussed that this is
23 also after you have had the benefit of looking at some things
24 from the image; right?

25 A. For sure.

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1 Q. When you write reports -- and don't let me -- correct me
2 if I'm wrong. I'm saying this because I think it's obvious,
3 but correct me if I'm wrong. It's important to be inclusive in
4 your reports -- right? -- include things that you did; right?

5 A. Okay.

6 Q. Is that true in your opinion?

7 A. Yes, sir.

8 Q. It's important because you're closer in time to the event,
9 and you recall things better to write down in a report; right?

10 A. Yes.

11 Q. Nowhere in this report did you mention imaging the phone,
12 did you?

13 A. No.

14 THE COURT: Nowhere did he mention?

15 MR. FINK: Imaging the phone, Your Honor.

16 BY MR. FINK:

17 Q. Is that accurate?

18 A. That is accurate.

19 Q. Nowhere in the report do you mention looking at pictures
20 after the fact, do you?

21 A. Correct.

22 Q. Is that correct?

23 A. Correct.

24 Q. Nowhere in this report do you even mention scrolling
25 through the phone, do you?

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1 A. Well, I didn't, but correct.

2 Q. I'm not saying you didn't, but you didn't write it in your
3 report; correct?

4 A. That is correct.

5 Q. You didn't write anything about seeing vials of steroids;
6 correct?

7 A. I'd have to look, but --

8 Q. You can look. Take your time, please.

9 A. Okay. If you're saying my report says that, then I agree.

10 Q. That it doesn't say that.

11 A. Correct.

12 Q. And I don't want you to just take my word for it. If you
13 want to look, please do. It doesn't, but take your time.

14 A. Okay.

15 Q. It also makes no mention of vehicles being torn up; right?

16 A. Correct.

17 Q. Is that an oversight?

18 A. I don't know.

19 Q. Do you think it would have been better to have included
20 those things?

21 A. I don't know.

22 Q. Agent Bianchi, you mentioned during the interview that one
23 of the things that was suspicious to you was the Columbia trip.
24 Do you recall that?

25 A. Yes, sir.

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1 Q. And the reason it was suspicious to you -- well, why don't
2 you tell us. Why was the trip to Columbia suspicious to you?

3 A. Initially the trip to Columbia was suspicious because
4 Mr. Didani traveled with Mr. Puzio there and then returned the
5 same day.

6 Q. So the association, number one, with Mr. Puzio; right?

7 A. Yes, sir.

8 Q. And the fact that he had a return trip so quickly; right?

9 A. Correct.

10 Q. And Mr. Didani explained to you that he was rejected at
11 the Colombian border; right?

12 A. Yes, sir.

13 Q. You were able to verify that; that that was true?

14 A. No.

15 Q. Did you ask if he was rejected at the border?

16 A. Mr. Didani?

17 Q. The Colombian officials.

18 A. No.

19 Q. Did you ever seek to verify whether that was true, that he
20 was turned away at the border?

21 A. No.

22 Q. So you don't know if he was lying to you?

23 A. I do not know.

24 Q. It could be true that he was declined at the Colombian
25 border; correct?

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1 A. Yes.

2 Q. You discussed in your interview and on direct
3 examination -- you said it arose suspicion -- well, inferred
4 that it arose suspicion, Mr. Didani's reference to his mineral
5 business. Do you recall that on your direct examination?

6 A. Yes, sir.

7 Q. And one of the suspicions you had, correct me if I'm
8 wrong, was that he couldn't give you a ZIP code. Do you
9 remember that?

10 A. I do not.

11 Q. Did you write in your report that one of the suspicions
12 you had was that he couldn't give you a precise location, a ZIP
13 code, for his mining business?

14 A. I don't recall.

15 Q. Do you want to look at your report to refresh your
16 recollection?

17 A. Sure.

18 Q. I'll see if I can point you to the right spot, but you
19 have my only copy so give me a moment.

20 THE COURT: Do I have a copy of that report?

21 MR. FINK: You don't, Judge, because somehow my most
22 important exhibit was not in my binder.

23 THE COURT: Well, walk up and look at his copy.

24 MR. FINK: Thank you, Judge.

25 THE COURT: If you want to point out something to

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1 him.

2 **MR. FINK:** Thank you, Judge.

3 **THE COURT:** Do you all want this to be on the record?

4 **MR. FINK:** No, Judge. I'm sorry.

5 **THE COURT:** I think probably you look for it and then
6 just don't have a discussion.

7 **MR. FINK:** You're absolutely right, Judge. My
8 apologies.

9 It's possible I'm referring to another report. I'm going
10 to move on, and we'll come back to that question.

11 **BY MR. FINK:**

12 **Q.** Agent Bianchi, there's a mention in your report of ISIS.
13 Do you recall writing that in your report?

14 **A.** I do.

15 **Q.** Do you know what ISIS is?

16 **A.** A terrorist organization overseas.

17 **Q.** And what you put in your report is that around the same
18 time that Mr. Didani was in Sanliurfa, Turkey, there was an
19 ISIS terrorist attack in that province. Do you recall writing
20 that?

21 **A.** I do.

22 **Q.** Do you have any evidence to suggest that Mr. Didani is
23 involved in terrorism?

24 **A.** Absolutely not.

25 **Q.** Okay. What was the purpose of including that in your

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1 report?

2 A. He had photos of it on his phone.

3 Q. Photos of what?

4 A. What appeared to be where that bomb went off at that time.

5 Q. He had photos of the city of Sanliurfa; correct? Is that
6 what you're saying?

7 A. There was a photo of him sitting on an airplane looking
8 out where smoke was coming up dated the same date and time as
9 that explosion went off.

10 Q. So he was on an airplane?

11 A. Correct.

12 Q. You didn't write that in your report, that he was on an
13 airplane, did you?

14 A. I don't know.

15 Q. You wrote that -- it coincided with his time in Turkey is
16 what you wrote in your report; is that correct? And take your
17 time to read it. I believe it's on the last page.

18 A. Okay, yes.

19 Q. What was the purpose of including that in your report?

20 A. I was just notating suspicious things, coincidences.

21 Q. So you were suspicious that he was somehow involved in
22 that attack?

23 A. No, not at the time.

24 Q. You just thought you would put it in there?

25 A. Yes, in case it came up again later.

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1 Q. Do you know anything about that attack? Did you research
2 it at all?

3 A. Just news articles.

4 Q. Do you know Mr. Didani's religion?

5 A. I do not.

6 Q. Do you know if he's Muslim?

7 A. I do not.

8 Q. You know ISIS is the Islamic state; right? Do you know
9 that?

10 A. I do.

11 Q. Do you know anything about Sanliurfa province in Turkey?

12 A. No.

13 Q. Do you know that it's a province of 2 million people?

14 A. No.

15 Q. Do you know that it's on the border with Syria?

16 A. No.

17 Q. Do you know it's the size of Massachusetts in square
18 miles? Do you know any of that?

19 A. No.

20 Q. Do you know who the terrorist attack was targeting?

21 A. I do not.

22 Q. That it was targeting Islamic youth that were part of the
23 Socialist Party. Do you know that?

24 A. I do not. Or I do not recall.

25 Q. Do you know anything about Mr. Didani's politics?

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1 A. I do not.

2 Q. So you don't have any suspicions that he's a terrorist;
3 correct?

4 A. That is correct.

5 Q. On direct examination, Agent Bianchi, you mentioned some
6 of the images, and I think we admitted into evidence Exhibits 1
7 through 5. One of the images was an AR rifle. Another image
8 was currency in cellophane. Do you recall discussing that?

9 A. Yes, sir.

10 Q. Okay. Did you happen to see the dates on any of those
11 pictures?

12 A. I don't recall.

13 Q. Okay. Do you have them in front of you?

14 A. I do not.

15 THE COURT: I have them.

16 BY MR. FINK:

17 Q. Are they dated at all --

18 THE COURT: Do you want me to pass them to him?

19 MR. FINK: Please, Judge. Thank you.

20 THE COURT: Thank you. I think that's just the
21 photographs.

22 MR. FINK: Your Honor, I have handed him Government's
23 Exhibits 1 through 5.

24 BY MR. FINK:

25 Q. Are there any dates on those pictures, Agent Bianchi?

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1 A. No, sir.

2 Q. Thank you. And you don't recall seeing any dates on the
3 pictures when you were looking through the phone; correct?

4 A. I don't recall at all.

5 Q. Do you recall seeing dates when you looked later on the
6 image?

7 A. Oh, yes.

8 Q. Okay. And what were the dates of those pictures?

9 A. I do not know.

10 Q. Were they close in time to the interview?

11 A. I don't know.

12 Q. Were they years before?

13 A. I don't know.

14 Q. Do you know how many photos Mr. Didani had total on his
15 phone?

16 A. I don't. I know it was thousands, but --

17 Q. Do you know how many years those photos spanned?

18 A. I don't.

19 Q. So, in conclusion, we don't -- those five pictures we
20 admitted along with the other pictures that you have discussed
21 today, you don't know the dates -- you don't and didn't know
22 the dates those were taken; correct?

23 A. I don't recall.

24 Q. Did you know at the time?

25 A. I may have.

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1 Q. But you don't know?

2 A. I don't know.

3 Q. Does that seem -- in your experience, 20 years in law
4 enforcement, does it seem important to know the proximity of
5 the timing of the picture that you're suspicious of?

6 A. To what?

7 Q. Well, if a picture is taken in 2004 that you're looking at
8 in 2015, it may be less suspicious or less concerning to you
9 than if it was taken the day before; is that correct?

10 A. Correct.

11 Q. And that's because if taken a long time ago it doesn't
12 necessarily indicate current wrongdoing; correct?

13 A. Correct.

14 Q. So it's an important thing to know; right?

15 A. Yes.

16 Q. Did you review -- you said that you know it was thousands
17 of pictures. Did you review all of the pictures prior to your
18 next encounter in 2016?

19 A. Yes, sir.

20 Q. Did you review anything else on his phone prior to your
21 encounter in 2016?

22 A. Yes, sir.

23 Q. What else do you recall reviewing in the time between
24 July 2015 to August 2016, about a year?

25 A. Messages and -- there was messages from different apps,

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1 threads that were on there.

2 Q. So you went through his text messages during this time;
3 correct?

4 A. Some, yes.

5 Q. And in your report dated August 13th, 2015, written about
6 the encounter from July 30 of 2015, you do not mention going
7 through text messages in that report; is that correct?

8 A. That is correct.

9 Q. In fact, I don't think you said it on direct exam either,
10 did you?

11 A. I did not.

12 Q. Okay. What else did you view in the phone?

13 A. I don't recall. There was a lot of stuff.

14 Q. But more than just that?

15 A. Yes, sir.

16 Q. I mean did you thoroughly go through the phone?

17 A. Yes, sir.

18 Q. Did you search every corner of it?

19 A. Yes, sir.

20 Q. All the apps?

21 A. Everything that was available.

22 Q. And, like we said, everything that was available was an
23 exact copy of that phone from the day it was taken; right?

24 A. Not exactly, but most of it.

25 Q. Well, the data as it was. Obviously --

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1 A. Correct. Some things didn't come. Some things didn't --

2 Q. Understood.

3 A. Yes.

4 Q. To the best you could, an image of that phone; correct?

5 A. Yes, sir.

6 Q. At that point, between July 2015 and your encounter in
7 August of 2016, while you were reviewing all portions of this
8 phone you did not have a warrant; correct?

9 A. A warrant?

10 Q. A search warrant for that phone; is that correct?

11 A. That is correct.

12 Q. Okay. You had no warrants for anything related to
13 Ylli Didani at this time; is that correct?

14 A. That is correct.

15 Q. So, to be clear, based on what the government will argue,
16 I'm not saying it's necessarily wrong, but just to be very
17 clear for the record, you did a warrantless search of the
18 entire phone that he had on him July 30 of 2015?

19 And there may be an exception to that. I'm asking you
20 just to make it very clear on this question. You did a
21 warrantless search of his phone on July 30, 2015 --

22 A. Correct.

23 Q. -- through August 2016. Yes?

24 A. Yes, sir.

25 Q. July 2015 to August 2016 is much longer than 30 days;

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1 correct?

2 A. Yes.

3 30 days though is from possession of his phone.

4 Q. Your belief on that rule is that the 30-day period applies
5 to the physical cellphone. Is that what you're saying?

6 A. Yes, sir.

7 Q. Now, this is an "if you know" question so if you know this
8 because I'm asking about other people's part of the
9 investigation.

10 If you know, other agents related to this investigation
11 would later rely on that 2015 extraction to conduct their
12 investigation in later years, in 2017, '18 and so on; correct?

13 A. I don't --

14 Q. If you don't know, that's an okay answer.

15 A. I -- they -- I don't know.

16 Q. Is that image that you took from 2015 still preserved
17 today?

18 **THE COURT:** If you know.

19 A. Yes.

20 **BY MR. FINK:**

21 Q. The image of the -- when I say "image" --

22 **THE COURT:** Image of the whole cellphone?

23 **MR. FINK:** Yes, I'm sorry.

24 **BY MR. FINK:**

25 Q. When I say "image," I don't mean a photograph. Is the

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1 image, the copy of the entire cellphone that was taken and
2 extracted by Border Patrol in 2015, is that still preserved
3 today?

4 A. It is.

5 Q. On that topic I want to be clear. You testified a moment
6 ago that you weren't the actual person to do the extraction;
7 right?

8 A. Correct.

9 Q. Customs and Border Patrol did the extraction?

10 A. Correct.

11 Q. Well, you were assigned to a task force. I know you are
12 Custom and Border Patrol as well, but actually Custom and
13 Border Patrol agents did the extraction?

14 A. Yes.

15 Q. I am not trying to trick you here. You were on a task
16 force for HSI, I understand that. I'm just asking you: The
17 actual physical task was done by Customs and Border Patrol
18 agents; right?

19 A. Correct.

20 Q. Okay. Putting aside what you saw on the phone, whether it
21 was that day or later, physically speaking, in his luggage or
22 otherwise, did Mr. Didani have any contraband on his person?

23 A. On which date?

24 Q. July 30, 2015.

25 A. Not that I'm aware of.

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1 Q. I mean if you need to refer to your report, sir, to
2 refresh your recollection, please do, but I would like
3 certainty in that answer if you recall. Did he have any
4 contraband on him from your memory?

5 A. Physical contraband?

6 Q. Yeah, physical contraband.

7 A. No.

8 Q. And no steroids on his person; right?

9 A. Correct.

10 Q. No drugs on his person; correct?

11 A. Correct.

12 Q. No firearms; correct?

13 A. Correct.

14 Q. You mentioned that you recognized on the phone a gentleman
15 last name Sheko. Do you remember that?

16 A. Yes, sir.

17 Q. Why did you recognize that person?

18 A. Because when I was doing research on Mr. Didani, it pulled
19 up that Mr. Didani had worked for him at that trucking company
20 that was under investigation for drug smuggling.

21 Q. Did Mr. Sheko have a criminal history of any kind?

22 A. I do not recall.

23 Q. Did he have any convictions?

24 A. I do not recall.

25 Q. Did he have any arrests?

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1 A. I do not recall.

2 Q. Do you remember looking into that at the time?

3 A. I do.

4 Q. And you don't remember the results?

5 A. I don't.

6 Q. Would you have placed the results, if there were any, in
7 your reports? Is that your normal practice?

8 A. Normally, yes, sir.

9 Q. From the time that Mr. Didani exited the plane on
10 July 30th, 2015, and I -- well, let me strike that and say
11 this.

12 I understand this is going to be an estimate so the best
13 you can. From the time Mr. Didani left the plane July 30,
14 2015, to the time you said here is your phone, you are all set
15 to go, how long would you say that entire encounter lasted?

16 A. Before he was actually admitted into the United States?

17 Q. Correct.

18 A. Hours. Six hours. Five or six hours.

19 Q. So he was detained approximately five to six hours before
20 admission; is that accurate?

21 A. It is.

22 Q. He was not free to leave at that time; right?

23 A. He wasn't according to Customs.

24 Q. Correct.

25 A. Correct.

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1 Q. If Mr. Didani wanted to leave secondary and go back on a
2 flight out of the country, he was not permitted to do that;
3 correct?

4 A. I don't know. They might let him do that. He was trying
5 to make entry into the United States. Customs is different
6 than what I do. I work for the Border Patrol.

7 Q. I understand. Would you consider him seized though if he
8 wanted to leave at that moment? Could he have?

9 A. I don't know. It would have been up to the Customs
10 officers.

11 Q. What would have been your suggestion?

12 A. If he wanted to leave?

13 Q. Yeah.

14 A. Sure.

15 Q. He was free to go?

16 A. I don't know. You asked for my suggestion.

17 Q. You put a hit out on him for -- a silent hit so you would
18 know when he came into the country; right?

19 A. Yes, sir.

20 Q. And the purpose of that was to detain him at the border;
21 right?

22 A. Interview him, yes.

23 Q. Stop him and interview him; right?

24 A. Yes.

25 Q. If you meet someone at the plane, you know, they are

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1 not --

2 A. We do that to everybody that gets off the plane.

3 THE COURT: I'm sorry, I didn't hear that.

4 THE WITNESS: We do that to everybody that gets off
5 the plane. They are questioned when they enter the
6 United States.

7 BY MR. FINK:

8 Q. You meet everyone at the plane?

9 A. Me?

10 Q. I'm saying Customs and Border Patrol ordinary protocol,
11 you meet them at the door of the plane? Not you personally but
12 law enforcement?

13 A. I don't know what their protocol is, but I know they have
14 Customs, so yes.

15 Q. Mr. Didani was met at the door of the plane -- right? --
16 by a CBP agent?

17 A. Okay. I don't know.

18 MR. FINK: So, Judge, I'm going to go into 2016.
19 This witness has been there for two hours. I'm just
20 offering -- I mean I have probably 45 minutes more or so.

21 THE COURT: Okay. You are offering a break?

22 MR. FINK: I'm okay, but I don't want to be like -- I
23 just do have time left so --

24 THE COURT: Do you want to take a break?

25 THE WITNESS: Sure.

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1 **THE COURT:** All right. You may step down. Let's
2 take ten minutes.

3 **MR. FINK:** Thank you, Judge.

4 **THE COURT:** You're welcome.

5 **THE WITNESS:** Do I leave this?

6 **THE COURT:** Whatever is there, leave it, and the
7 lawyers will take care of it. All right?

8 (Recess from 12:21 p.m. to 12:40 p.m.)

9 **LAW CLERK:** Court is back in session.

10 **THE COURT:** Okay. Does the witness want to come back
11 up, please.

12 And you're still under oath.

13 You heard me say, "You're still under oath"?

14 **THE WITNESS:** Yes, ma'am.

15 **THE COURT:** All right. Very good.

16 You may proceed, counsel.

17 **MR. FINK:** Thank you, Your Honor.

18 **THE COURT:** And, sir, I forgot your arm is in a sling
19 so if you need a break you need to let me know. Okay?

20 **THE WITNESS:** Okay. I'm fine. Thank you.

21 **THE COURT:** Okay. Go ahead, counsel.

22 **MR. FINK:** Thank you, Judge.

23 **BY MR. FINK:**

24 **Q.** Where we left off, Agent Bianchi, was we were discussing
25 the July 30, 2015, encounter, and we left off with the

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1 information that you learned from an image of that phone, and I
2 was going to proceed from there.

3 So you write that report. I believe we were talking about
4 the August 13, 2015 report. After --

5 Oh, there's one thing the prosecutor and I spoke about
6 that I want to clarify for Judge Hood's benefit and for the
7 record's benefit. The United States Border Patrol, correct me
8 if I'm wrong, is responsible for ground travel into the
9 country; is that correct?

10 So from Canada to the United States if you travel by car
11 you will be met by the United States Border Patrol agency. Is
12 that accurate?

13 A. That is not.

14 Q. Okay. Tell me why I'm wrong.

15 A. That would be Customs.

16 THE COURT: That would be Customs who would stop you
17 like at the tunnel or the bridge?

18 THE WITNESS: Yes, ma'am.

19 THE COURT: Okay.

20 THE WITNESS: Border Patrol is in between the ports
21 of entry.

22 BY MR. FINK:

23 Q. Understood. So when it's --

24 THE COURT: Wait a minute. Tell me that again. In
25 between the ports of entry?

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1 **THE WITNESS:** Yes, ma'am.

2 **THE COURT:** So you are in between Port Huron and
3 Detroit, for instance?

4 What do you mean ports of entry?

5 **THE WITNESS:** Yes, ma'am. At ports of entry, like
6 the bridge or the tunnel or airports, where people enter the
7 United States, a port of entry is a designated point or place
8 that people can enter the United States. Border Patrol
9 operates in between those, for people that are trying to sneak
10 into the United States or what not, not at a designated place.

11 **THE COURT:** Give me an example of that.

12 **THE WITNESS:** On the river. We work a lot on the
13 river where people -- Canadians will get a boatload of people
14 and try to smuggle them into the United States by just crossing
15 the boat and dropping them off or narcotics.

16 **THE COURT:** Okay. So do you handle -- for instance,
17 you mentioned earlier people going on their jet ski over to
18 Canada. Do you handle that?

19 **THE WITNESS:** Yes, ma'am.

20 **THE COURT:** Do you stop those people? Are they
21 always suspicious?

22 **THE WITNESS:** We do stop those people. What do you
23 mean by "are they always suspicious?"

24 **THE COURT:** Well, you said it was suspicious that --
25 earlier. Almost at the beginning of your testimony you said it

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1 was suspicious that these people got on jet skis, went over to
2 Canada, and stayed a couple of hours.

3 **THE WITNESS:** They went out towards Canada and stayed
4 a couple of hours. It is because they have to legally report
5 that, and they did not.

6 **THE COURT:** Oh, okay. They have to report it before
7 they go or when they come back?

8 **THE WITNESS:** Both.

9 **THE COURT:** Okay. So like in the old days people
10 would ride their boats across to a restaurant, dock at the
11 restaurant and eat, and come back. They have to report that?

12 **THE WITNESS:** Yes, ma'am.

13 **THE COURT:** Okay. Is it considered suspicious if
14 they go over there, eat and don't report it?

15 **THE WITNESS:** Yes, ma'am.

16 **THE COURT:** Okay.

17 **BY MR. FINK:**

18 **Q.** And that actually clarified it for me. So United States
19 Border Patrol is a law enforcement arm basically in between
20 points of entry. So the Mexican/United States border is
21 probably more talked about, you know, areas where we have heard
22 build a wall or whatever, the enforcement arm would be United
23 States Border Patrol to stop illegal crossings; right?

24 **A.** Yes, sir.

25 **Q.** And Customs and Border Patrol would be at the points of

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1 entry, like airports, tunnels to receive people who are
2 lawfully entering -- well, are entering through a point of
3 entry. Is that accurate?

4 **A.** Yes, sir.

5 **Q.** Okay. So distinguishing between those two, when I
6 interchangeably have been using the two, what we're talking
7 about at O'Hare Chicago Airport is Customs and Border Patrol,
8 CBP?

9 **A.** Yes, sir.

10 **MR. FINK:** Thank you very much. Is that adequate?

11 **THE COURT:** Tell me again.

12 **MR. FINK:** Of course, Judge.

13 **THE COURT:** You are talking about Customs and Border
14 Patrol at the airport?

15 **MR. FINK:** Correct. So, Judge, for legal crossings
16 or for points of entry where people are encouraged to cross the
17 border into the United States, airports, tunnels, bridges,
18 points of entry that are designated for border crossings, the
19 enforcement arm or the law enforcement that handles that is the
20 Customs and Border Patrol, CBP.

21 When there is illegal crossings not at a port of entry
22 where someone may be running across the border, swimming
23 across, what have you, the folks that are responsible for
24 enforcing our border integrity at nonpoints of entry is
25 United States Border Patrol, two different agencies.

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1 **THE COURT:** Okay. All right. Do you agree with
2 that, counsel?

3 **MR. BILKOVIC:** The only thing is CBP is Customs and
4 Border Protection.

5 **MR. FINK:** I can't get it right, but I agree with
6 that. I'm going to call them CBP if that's okay with everyone.

7 **THE COURT:** Okay. Which were you a part of?

8 **THE WITNESS:** Border Patrol.

9 **THE COURT:** Not Customs and Border Protection. Okay.
10 Got it. Is that correct?

11 **THE WITNESS:** Yes, ma'am.

12 **THE COURT:** Okay. Go ahead.

13 **BY MR. FINK:**

14 **Q.** So you -- the department you are assigned to generally,
15 putting aside the task force designation that happened from
16 time to time in your career, your general assignment is to the
17 United States Border Patrol; is that accurate?

18 **A.** That is, sir.

19 **Q.** You are not employed by the Customs and Border Protection?

20 **A.** Correct.

21 **Q.** Okay. Your checks are signed by the United States Border
22 Patrol, but it's the Department of Homeland Security --

23 **A.** Correct.

24 **Q.** -- United States Border Patrol. Okay. Thank you.

25 Then, to be clear, at the O'Hare Airport when you are on

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1 the HSI task force and you are asking for assistance at the
2 airport, you are asking for the assistance of CBP, Customs and
3 Border Protection?

4 A. Correct.

5 Q. Okay. Understood. So not your agency?

6 A. Correct.

7 THE COURT: So your agency doesn't go to the gate and
8 meet somebody that they think is illegally entering?

9 THE WITNESS: Correct. Well, illegally entering?

10 THE COURT: Yeah. I mean people do get on planes in
11 an attempt to illegally enter, for instance, at Detroit?

12 THE WITNESS: Yep.

13 THE COURT: Do you meet those people or does Customs
14 and Border Protection meet them?

15 THE WITNESS: Customs and Border Protection meets
16 them.

17 THE COURT: Even if you are the person alerting them?

18 THE WITNESS: Correct.

19 THE COURT: Okay. Do you do the train tunnel?

20 THE WITNESS: I do not. That's also Customs and
21 Border Protection, ma'am.

22 THE COURT: Okay. All right. Great.

23 BY MR. FINK:

24 Q. So when you need this assistance, like in our case or any
25 case where you have a silent hit for someone traveling, you

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1 will summon or solicit, I should say, the assistance of Customs
2 and Border Protection?

3 A. Yes, sir.

4 MR. FINK: Okay. Judge, did I make that record clear
5 for you?

6 THE COURT: Got it. Uh-huh.

7 MR. FINK: Thank you.

8 BY MR. FINK:

9 Q. Well, and I also want to clarify this. You indicated that
10 Mr. Didani was detained for approximately five, six hours. We
11 spoke about that a moment ago. Do you recall that?

12 A. Yes, sir.

13 Q. Now, it has come to my attention that some of that time
14 involved an improper designation by NTC. What's NTC?

15 A. National Targeting Center.

16 Q. And the National Targeting Center will put a notice, if
17 somebody is convicted of a crime or makes them ineligible to
18 enter the United States, there will be a flag when that person
19 tries to enter the United States; correct?

20 A. Correct.

21 Q. And there was an improper tag placed on Mr. Didani based
22 on what was expected to be a conviction in the Michigan courts
23 but ended up being a not guilty verdict; correct?

24 A. Correct.

25 Q. So that extended some of the time that he was detained in

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1 your interaction; right?

2 A. Correct.

3 Q. So let's exclude that time that it took to clear up the
4 NTC issue and just estimate the time that it took with -- from
5 the time CBP took them to secondary to you and you did your
6 investigation with Mr. Fuentes, can you estimate how many hours
7 that was?

8 A. I'd say one to two.

9 Q. So your interaction was one to two. The balance of the
10 time, the three to four, was waiting for NTC to clear up their
11 issue?

12 A. Yes.

13 THE COURT: I have got a question. When you go there
14 at the airport and he is detained for the one to two hours, is
15 he in your custody or the custody of the Customs and Border
16 Protection?

17 THE WITNESS: Customs and Border Protection.

18 THE COURT: Was anybody from Customs and Border
19 Protection there? Fuentes is from Customs and Border
20 Protection?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Okay. Remember, gentlemen, if you object
23 to my question, you need to raise it now. Otherwise it's
24 waived.

25 MR. FINK: I think it was an excellent question.

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1 **THE COURT:** Okay. Thank you.

2 **MR. FINK:** You're welcome.

3 **THE COURT:** You can begin questioning again.

4 **BY MR. FINK:**

5 **Q.** Agent Bianchi, after -- now that we have cleared up those
6 things, thank you for bearing with me.

7 After Mr. Didani was -- you concluded, the image was made
8 of his phone, that was returned to him. After the interview
9 and his luggage was searched and all of that was completed,
10 Mr. Didani ultimately was admitted to the United States;
11 correct?

12 **A.** Yes, sir.

13 **Q.** Okay. And after he was admitted to the United States, you
14 and other law enforcement conducted surveillance of him; is
15 that accurate?

16 **A.** At a later date and time.

17 **Q.** Sure. In fact, you wrote a report on September 11, 2015,
18 so about a month after the report you wrote about the
19 July 30th interaction, discussing the surveillance you did of
20 Mr. Didani through the month of August 2015. Do you recall
21 that?

22 **A.** Yes.

23 **Q.** I'm going to approach you with that, okay?

24 **A.** Yes, sir.

25 **MR. FINK:** Judge, is that okay?

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1 **THE COURT:** Yes, it is. What's the date on it?

2 **THE WITNESS:** The date on this report, Your Honor, is
3 September 11th, 2015, and marked as Bates stamp --

4 **MR. BILKOVIC:** I have it. Thank you.

5 **MR. FINK:** Judge, I'm going to approach your
6 wonderful case manager with a copy for you.

7 **THE COURT:** She's actually my law clerk.

8 **MR. FINK:** Your wonderful law clerk. My sincerest
9 apologies.

10 **BY MR. FINK:**

11 **Q.** Agent Bianchi, what I have handed you if you need to refer
12 to it -- do you recognize this report?

13 **A.** Yes, sir.

14 **Q.** Okay. This is a report dated September 11, 2015, and it's
15 titled "Survey of Didani during August 2015;" correct?

16 **A.** Yes.

17 **Q.** Okay. And that first sentence describing the scope of the
18 investigation is similar to the last one, which includes the
19 new categories of steroids, vehicles and counterfeit money;
20 correct?

21 **A.** Yes.

22 **Q.** Okay. On Page 2 of this report you make mention of the
23 post-inspection of Didani's phone. This is what we were
24 discussing before; correct?

25 **A.** Uhm --

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1 Q. Post-inspection of Didani's phone means you are viewing
2 the copy made of his phone; right?

3 A. Yes.

4 Q. And you write that it included the picture of a shipping
5 label that was addressed to a redacted person, and that's also
6 on Page 2. Do you see that?

7 Well, let me ask you, do you recall that?

8 A. Yes.

9 Q. Okay. And from your recollection, and certainly I'm doing
10 my best to go in order of your own reports, but to the best of
11 your recollection, this is the first mention in any of your
12 reports of actually reviewing the phone image that was taken on
13 July 30 of 2015; right?

14 A. Yes.

15 Q. Okay. And you discussed the other surveillance that was
16 done post-inspection. For example -- I believe this is on
17 Page 2 as well. Well, it starts at the -- it starts at the
18 bottom in a note on Page 2, and it says that "an individual
19 named Didani had a text message conversation in 2014," and then
20 there's a description of that text message conversation at the
21 top of Page 3, which is labeled 1508, if you're looking at that
22 page number. Do you see that?

23 A. Yes, sir.

24 Q. What about this conversation is suspicious to you? And
25 you can take your time to refresh your recollection if you need

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1 to.

2 Why did you include it in this report?

3 A. I mean what is suspicious is the totality of everything
4 that I keep seeing.

5 Q. Sure. Explain it to me.

6 A. The fact that he won't -- this person won't owe anybody
7 anymore money once the deal is done. All these -- it seems
8 very hidden on how it's worded.

9 Q. You think they are using like covert language? Is that
10 what you're saying?

11 A. Secret, yes.

12 Q. To try to hide some nefarious deal; is that the
13 suggestion?

14 A. I don't know.

15 Q. Well, it's important because you are the person who
16 purportedly does know so I'm asking you what raised your
17 suspicions about this conversation that you chose to include in
18 this report.

19 A. The secrecy and the totality of everything else leading up
20 to that.

21 Q. So the express words on the page don't specify any illegal
22 activity; correct?

23 A. Correct.

24 Q. But the language and the use of the phrases in here give
25 you a hunch; right?

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1 A. A hunch?

2 Q. Based on your law enforcement experience, you have a hunch
3 that it's something illegal?

4 A. That it could be.

5 Q. Could be something illegal.

6 You can take some time to look at this report because I
7 don't want to put words in your mouth, but essentially -- or I
8 don't want to tell you what it says if you don't recall, but
9 essentially you write that Didani was followed around to
10 different addresses going in and out, taking bags out of the
11 car, he went on a private plane and put on a flight suit and
12 got off the plane. In and of itself, are any of the things
13 that are mentioned in this surveillance illegal?

14 A. No.

15 Q. Had you not seen Mr. Didani's phone, would you have been
16 as suspicious of these activities as you were having seen his
17 phone?

18 A. Yes.

19 Q. You would have been just as suspicious about someone
20 flying on a private plane in a Maverick-like flight suit?

21 A. Suspicious of what?

22 Q. Well, I'm asking that --

23 **THE COURT:** You are suspicious of a lot, is that what
24 you said?

25 **THE WITNESS:** Yes, ma'am, to all the totality leading

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1 up to this point.

2 **BY MR. FINK:**

3 Q. My question really is this: Having seen the photographs
4 and text messages and things that you viewed on Mr. Didani's
5 phone -- right? -- I'm asking you did those things heighten
6 your suspicions about these otherwise innocuous activities?

7 A. Yes.

8 Q. Why? Why did the phone make these otherwise innocuous
9 activities more suspicious?

10 A. Because of the images and messages that were on the phone.

11 Q. So the money, the guns, and things of that nature give
12 different meaning to flying on a plane by yourself to getting
13 bags out of the trunk and the things that you mention in this
14 report. Is that what you're saying?

15 A. Yes, and his associates.

16 Q. Can you explain to me why you were suspicious that he
17 was -- I'm going to go back to your first sentence.
18 Specifically what about this surveillance made you suspicious
19 that he was possibly smuggling steroids, contraband, vehicles,
20 counterfeit money and money laundering? What about the
21 surveillance in August of 2015 made you suspicious of those
22 things?

23 A. During surveillance?

24 Q. Correct.

25 A. We are just gathering intelligence at that point. I

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1 cannot say indefinitely there was anything in particular for
2 what we saw.

3 Q. I mean that's what I'm asking. So you are agreeing with
4 me that your surveillance in August of 2015 wasn't really
5 raising any suspicions?

6 A. Except for his associates.

7 Q. Except for his association with people that you had
8 suspicions about?

9 A. Correct.

10 Q. And your suspicions of those people were based on their
11 prior history and historical information; right?

12 A. Correct.

13 Q. Okay. But as to Didani himself, outside of those
14 associations, these activities didn't necessarily make you
15 suspicious of any of the topics in your investigation; right?

16 And, if they do -- I'm not trying to trick you. If they
17 do, tell me what.

18 A. That's not -- so if you go back to the interview, he said
19 he lived in Fraser, Sabre Lane, he never even went there.

20 Q. Okay. So one example you are giving me is in his
21 interview he told you of these destinations that he either
22 lived or frequented, but during the surveillance you didn't
23 observe him to go there?

24 A. Correct.

25 Q. Okay. Was the surveillance 24/7 for the entire month?

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1 A. No.

2 Q. Okay. So he could have in the times that he wasn't being
3 surveilled; right?

4 A. Sure.

5 Q. We just don't know -- right? -- for sure. We can't say
6 for sure that he did not go to those addresses that he gave
7 you?

8 A. Correct, but we did know for sure that it was not his
9 current address.

10 Q. Understood. Anything else?

11 So you mentioned that's one thing that you found
12 suspicious about his activities. Is there anything else from
13 this report of note to call the Court's attention to about your
14 suspicion of Didani?

15 Or at this time generally just based on your memory. It
16 doesn't have to be just this report.

17 A. No.

18 Q. Okay. At this point -- so now we're -- this report is
19 September 11, 2015. So at this point have any warrants been
20 requested at this point?

21 A. Via September of 2015?

22 Q. Yeah, the date of this report. To your knowledge any --

23 A. To my knowledge, no.

24 Q. Okay. You certainly haven't been an affiant on any search
25 warrant to date?

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1 A. Correct.

2 Q. Okay. On -- now, this is -- I'm a little bit out of order
3 so just to give you a frame of reference. You did an 8/13,
4 August 13, report on your interview, okay? And I have also
5 given you the September 11th report about the surveillance in
6 August.

7 Now I'm going to be discussing a report that was also
8 written in August. I'm staying in the general time frame here,
9 but this was written August 10 of 2015, and it's entitled
10 "Association of Puzio and [another individual]."

11 MR. FINK: Judge, may I approach with this?

12 THE COURT: You may.

13 BY MR. FINK:

14 Q. This August 2015 report is about an association of
15 Eric Puzio, and I'm not going to put the second name on the
16 record at the request of the government, but another
17 individual, detailing a relationship between these two; is that
18 correct?

19 A. Yes, sir.

20 Q. And can you kind of summarize essentially what we can
21 glean from this report that was taking place around the same
22 time as your surveillance of Didani? And you can take your
23 time if you need to refresh.

24 A. Okay. To summarize this report?

25 Q. Yeah, and the information that we learned from that

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1 report.

2 A. Well, it's just an association between Puzio and another
3 individual.

4 Q. Okay. And what was your suspicion in that regard?

5 A. I'd have to read the report.

6 Q. This individual -- Puzio's relationship with this other
7 individual, I'm not curious necessarily the details of what you
8 discovered but how it relates to Didani. I want to know what
9 your suspicion was.

10 We discussed your surveillance. We discussed your
11 interview. I'd like to know if there was anything from this
12 report that was necessarily relevant to Didani other than you
13 have some connection between Didani and Puzio?

14 A. No.

15 Q. So just still Eric Puzio and his relationship, not
16 necessarily involving Didani; right?

17 A. To the best of my knowledge, yes, that is correct.

18 Q. Fair enough. Okay.

19 We touched on this without the benefit of a report, but
20 I'm just going to return to it very briefly. Up there you
21 still should have your "Didani Opening Report" from
22 February 2015. If you don't see it, tell me, and I'll bring
23 you this page.

24 A. Yep.

25 Q. This opening report related to Didani, we have already

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1 discussed it, but I just want to clarify because this is just
2 more information about Mr. Puzio and his connections. Do you
3 recall there was an incident where Detroit Border Patrol
4 stopped a boat in the river?

5 Do you recall an incident involving Mr. Puzio where
6 Detroit Border Patrol stopped a boat with him on it?

7 **THE COURT:** A boat with Mr. Puzio on it?

8 **MR. FINK:** Correct, Judge.

9 **THE WITNESS:** I don't recall.

10 **BY MR. FINK:**

11 **Q.** Okay.

12 **A.** But --

13 **Q.** Okay. I'm going to move on from that because that's
14 actually where -- Mr. Hussein. We have already discussed that
15 so you can put that down. I'm going to move to 2016.

16 In between the time of your surveillance in August of
17 2015, which was written in September, do you recall any major
18 events regarding the investigation into Mr. Didani from
19 September until August of the following year, in 2016, which
20 we're going to talk about in a minute, where he was met at the
21 border? Do you remember any other substantial new information
22 coming up at that time?

23 We know you were reviewing the phone still, but is there
24 any other information that the Court should be aware of that
25 raised your suspicions beyond what we have already talked

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1 about?

2 A. The date ranges again?

3 Q. So this would be from your surveillance in August of 2015,
4 which you wrote a report in September of 2015, from that time,
5 that surveillance ended until you saw him again at the O'Hare
6 Airport the summer of the following year, did any major events
7 or anything take place that continued to raise your suspicions
8 of Mr. Didani that you can recall?

9 A. I'd have to look at my report. I believe there was.

10 Q. Well, I mean do you know that there's other reports
11 between September and August offhand?

12 A. I do not. I do not know.

13 Q. From your personal knowledge and your own recollection,
14 can you think of anything major between that time and the 2016
15 encounter that added to your evidence or suspicions, what have
16 you, against Mr. Didani? From just your memory.

17 THE COURT: I think he just wants you to answer from
18 your memory. If you're not, then tell him what report you're
19 looking at.

20 BY MR. FINK:

21 Q. Just your own recollection generally. I mean this is a
22 case you lived and breathed; right?

23 A. There was a time where a large amount of -- well, \$23,000
24 got wired to Didani.

25 Q. What are you relying on to look at that?

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1 A. The report dated 9/11/2015.

2 Q. Okay. So you're refreshing your recollection with the
3 September 11th report?

4 A. Yes, sir.

5 Q. Okay. And what is the incident you are referring to?

6 A. Where an individual conducted five transactions wiring
7 Didani a total amount of 23,000 within a month's time period.

8 Q. You are reading from your report. Do you recall this?

9 A. Yes.

10 Q. Okay. What was suspicious about those wire transfers?

11 A. Sending \$23,000 to Didani overseas, five separate
12 transactions.

13 Q. What's suspicious about that?

14 A. There could be multiple things.

15 Q. Could there be multiple legitimate things as well?

16 A. Yes, except when the individual was contacted he said he
17 was being scammed.

18 Q. I'm asking you these questions so explain that please.

19 A. What's that?

20 Q. The individual was contacted. I'm not sure who you are
21 talking about. I'm asking you to tell me what was suspicious
22 about these wire transfers.

23 A. It was written in the wire. I don't know who contacted
24 him.

25 Q. So you don't have any personal knowledge of anything other

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1 than there was a wire of \$23,000 in five different wires, but
2 you don't really know any details about it; right?

3 A. Correct. Well, to where it was sent and to whom.

4 Q. And we're not saying the name of that person. Is there is
5 a reason for that? And I'll respect it if there is. Is there
6 a reason why we're not revealing that name?

7 THE COURT: Well, is it to the same person? Don't
8 tell me the name. Just tell me --

9 THE WITNESS: Yes.

10 THE COURT: Is it to the same person?

11 THE WITNESS: Yes.

12 THE COURT: Okay.

13 MR. FINK: Okay. And is that person --

14 THE COURT: From the same person, I guess I should
15 say.

16 THE WITNESS: Yes.

17 BY MR. FINK:

18 Q. The wires were from a person overseas for \$23,000 over
19 five wires to Mr. Didani?

20 A. Yes.

21 Q. Where was the bank account that it was sent into; do you
22 know?

23 A. I do not.

24 Q. Okay. Was the person that was sending it suspicious to
25 you for some reason without saying their name?

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1 A. Yes.

2 Q. The government has no problem with you revealing that name
3 as being particularly problematic so who is this person?

4 A. Mr. Larson.

5 Q. Don Larson?

6 A. Yes.

7 Q. What was suspicious about Mr. Larson?

8 A. He had been sentenced to life in prison for cocaine.

9 Q. Okay. And Mr. Larson from prison was sending wire
10 transfers? I'm having trouble understanding.

11 A. No, he got released on parole early.

12 Q. Okay. He wasn't doing life. He was sentenced up to life,
13 and he was paroled?

14 A. Correct.

15 Q. Okay. And he sent wire transfers to Mr. Didani?

16 A. Correct.

17 Q. And why is that suspicious?

18 A. Again, the totality of everything, all the cash,
19 everything that he has. You have a person that has been
20 convicted of cocaine delivery, possession sending another
21 person that was involved in a cocaine-smuggling investigation
22 prior, sending money that is under the \$10,000 lump sum to
23 another individual outside of the country. All of this is
24 building suspicion to some nefarious activity.

25 Q. Okay. So if I'm understanding correctly, the criminal

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1 history of the payor and the criminal history of the payee of
2 these wire transfers, together with the fact that they were
3 sent in five separate transactions under 10,000 raised your
4 suspicion that there was something nefarious?

5 A. As well as everything else.

6 Q. What's everything else?

7 A. The pictures on the phone, the travel history.

8 Q. Was there a picture of -- do you know who Donald Larson
9 was?

10 A. Yes.

11 Q. Who is he?

12 A. A person that lives in Fraser.

13 Q. Okay. And what was his connection, in your view, to
14 Mr. Didani?

15 A. They appeared to be associates, friends.

16 Q. Based on the wire transfer or did you have other
17 information as well?

18 A. I don't recall at the time.

19 Q. Okay. You don't know?

20 A. I don't know.

21 Q. And Mr. Larson -- is there anything else about that
22 relationship that you want to share that raised your suspicion
23 other than the funds that you just discussed?

24 A. No. Does that answer your question?

25 Q. I don't know the answer to this so I can't tell you.

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1 A. That was the other thing that I was thinking about. I
2 wasn't sure what date that occurred on, but yes, that happened
3 in between --

4 Q. The wire transfers?

5 A. -- the wire transfers.

6 Q. I'm just asking you is there anything about a man named
7 Donald Larson -- who the Court has no idea who that is other
8 than the name you gave him -- is there anything about him and
9 his prior conviction -- other than his prior convictions and
10 the money transfer that gave you suspicions about him having a
11 relationship with Mr. Didani?

12 A. At this point in time during the investigation?

13 Q. At this point in time, correct.

14 A. I do not recall. There are other things. I don't know --

15 Q. That may have come out later. I understand. Our
16 interest -- and that's why I'm directing you between this time
17 and August of 2016 when you encounter Mr. Didani again -- what
18 you knew at that time so I appreciate you being precise on
19 those answers, and if the answer is that's what you knew at the
20 time, that's an okay answer. That's what I'm asking.

21 A. Yes.

22 Q. So we now have this wire transfer issue with Mr. Larson.
23 We have the Eric Puzio connection, the Mr. Hussein connection,
24 the phone search that you conducted back in August. We have
25 the origins of the investigation, which me and you discussed at

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1 the beginning. So that's where we're at with this case. Is
2 that kind of -- I, of course, would leave you some details and
3 latitude, but that's a general overview of where we're at;
4 correct?

5 A. Correct.

6 Q. Okay. Now, if we move forward in time, the original
7 question I had asked you, between September of 2015 to August
8 of 2016, that approximate year, was there any other suspicion
9 or evidence that came to your attention before you met with --
10 or Mr. Didani was detained at the border again, which we'll
11 talk about? And this might not be in a report. I'm just
12 asking your recollection.

13 A. I believe that's it, from my recollection.

14 Q. Okay. So, as you sit here today, having kind of been in
15 charge of this case for a long time, to your recollection, and
16 I know there could be other reports and Mr. Bilkovic can come
17 up and ask about it, but to the best of your memory the things
18 we have talked about are the basic premise of what your
19 suspicions are against Mr. Didani prior to August of 2016?

20 A. Correct.

21 Q. There's nothing else you want to add at this point that
22 you can think of?

23 A. Not that I can think of, no.

24 Q. All right. So August of 2016, let's talk about that. On
25 August 6 of 2016 we have another encounter with Ylli Didani at

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1 the O'Hare Airport; is that accurate?

2 A. Yes, with other people.

3 Q. Of course. I am going to reply upon your -- you wrote
4 this the same day, August 6 of 2016.

5 MR. FINK: Judge, may I approach?

6 THE COURT: Yes.

7 MR. FINK: Just so you have it if you need to refer
8 to it.

9 THE COURT: Thank you.

10 BY MR. FINK:

11 Q. Okay. This -- just so we're clear, if you need to refresh
12 your recollection, what you are holding, correct me if I'm
13 wrong, is an August 6, 2016, report titled "Interview of Didani
14 and Phone Seizure;" is that correct?

15 A. Yes.

16 Q. And it's authored by you; right?

17 A. Yes, sir.

18 Q. Okay. Prior to the stop that was made sometime on
19 August 6, 2016, you were alerted that Mr. Didani would be
20 entering the United States via Chicago O'Hare Airport; correct?

21 A. Correct.

22 Q. And you were made aware that he was coming from Albania;
23 is that accurate?

24 A. Mr. Didani flew in from different places all the time.

25 Q. Sure, I understand. To the extent you recall.

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1 A. Yes.

2 Q. Okay. And how are you notified of that? I think we
3 talked about the email you send, but is it just a system or
4 what alerts you that he'll be traveling?

5 A. A system email.

6 Q. Okay. So you get generated a notice that his name has
7 been used on some flight manifest, and he will be arriving on
8 this date and time; correct?

9 A. Yes, sir.

10 Q. Okay. So you alert -- I'm going to do this the right way.
11 You alert Customs and Border Protection, CBP, because it's an
12 airport of Mr. Didani coming in and your desire to meet with
13 him or no?

14 A. In this case, no.

15 Q. All right. So let's -- we will try to be as precise as
16 possible. What actions did you take upon receiving that alert?

17 A. I was going to be on leave or was on leave at the time so
18 I reached out to an HSI agent at the Chicago O'Hare Airport to
19 see if he could handle everything for me.

20 Q. Okay. Are HSI, Homeland Security Investigations, agents
21 typically stationed at airports in the United States?

22 A. Yes.

23 Q. All airports or just major airports or do you know?

24 A. I do not know.

25 Q. Okay. But on this occasion at O'Hare there was an HSI

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1 agent stationed there; correct?

2 A. I believe so. I believe that's where he's stationed out
3 of, yes.

4 Q. Well, do you remember how you came to find this gentleman?

5 A. Yes. My group supervisor gave me the phone number to call
6 over there.

7 Q. Okay. So you went to your group supervisor and said, hey,
8 I've got a hit and I would like to have him interviewed, what
9 do I do? Of course, it might be paraphrasing, but something
10 like that?

11 A. Yes, sir.

12 Q. Okay. And the supervisor responded with call this person,
13 this HSI agent at O'Hare; right?

14 A. Yes, sir.

15 Q. Do you recall that person's name?

16 A. Who I spoke with?

17 Q. The agent, yeah, at O'Hare.

18 A. Yes, sir.

19 Q. What's his name?

20 A. Nugent, Special Agent Nugent.

21 Q. Okay. So you alert Special Agent Nugent, and what do you
22 tell -- do you do it by phone call? Email?

23 A. Phone.

24 Q. Okay. You call him on the phone, and what do you say, if
25 you recall? And you can paraphrase. I'm sure it's not --

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1 A. Yeah. Basically everything that I have seen in the
2 ongoing investigation. It's been a while since Didani has been
3 back in the country. I wanted to see his travel history again,
4 his passport, where he went during that period of time since
5 the last time he was interviewed and now, things like that.

6 Q. Okay.

7 A. And to check for contraband, of course.

8 Q. Okay. So you tell Nugent a little bit of
9 background -- right? -- about Didani or do you?

10 A. Yes. I tell him a lot --

11 Q. Do you tell him what the investigation is about generally?

12 A. Yes.

13 Q. That he is suspected of drug smuggling, counterfeiting,
14 all of the things that are mentioned in your report?

15 A. For the most part.

16 Q. Give him kind of a 30,000-foot view of the case?

17 A. Correct.

18 Q. Okay. And what is the specific request that you are
19 asking of him, to detain Didani or to interview him? What is
20 like the specific request you would make?

21 A. To interview him.

22 Q. So you as an HSI officer say to another he's coming into
23 O'Hare, I'd like you to have him interviewed?

24 A. Correct, and then use his investigative experience to do
25 what he thinks is best.

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1 Q. Okay. Now, Agent Nugent -- Special Agent Nugent, as far
2 as you know, conducted an interview of Didani; correct?

3 A. Correct. As far as I know, yes. I was not there.

4 Q. Well, you summarized his interview in your report; is that
5 correct?

6 A. Yes. I copied his report into this report.

7 Q. Okay. So this report that we're looking at for purposes
8 of your recollection if you need it --

9 A. Parts of it.

10 Q. This would be copy and pasted from a report that Nugent
11 filled out?

12 A. Parts of it.

13 Q. Okay. Did you ever talk to Nugent again or just read what
14 his report said?

15 A. At what point?

16 Q. After, after the interview with Didani.

17 A. After the interview with Didani, yes, he contacted me and
18 told me that he detained the phones and was sending them to my
19 office.

20 Q. Okay. So, by telephone, he said we just did an interview,
21 I also took two phones from Didani; correct?

22 A. Yes.

23 Q. Okay. And, forgive me, the last part was he would be
24 sending them to you; is that what he said?

25 A. Yes.

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1 Q. So was that the extent of the actual phone conversation
2 from what you recall?

3 A. Yes.

4 Q. And as to the content of the interview, was that just
5 something you read from a report or did he tell you about that,
6 too?

7 A. No, that was something I read.

8 Q. Okay. So he didn't tell you the content of the interview.
9 He just told you I've got two phones, they are on their way?

10 A. Correct. I was wondering if even Didani had came into the
11 country at that time.

12 Q. Sure, understood.

13 A. Again, I was on leave.

14 Q. You were on leave, you weren't personally there, so he was
15 giving you the basics, he arrived, seized two phones, sent them
16 to you; correct?

17 A. Yes, sir.

18 Q. Okay. You tell me if this is -- because you said you were
19 summarizing the report -- if this is a question for Agent
20 Nugent, that's who I'll ask it of, but only if you have
21 personal knowledge of this from your investigation. Do you
22 recall in that review -- this is what I was going to ask you
23 before, but it was in this report -- about Mr. Didani
24 mentioning his mineral business?

25 A. In the 2016 interview?

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1 Q. In his interview with Agent Nugent.

2 A. No, I do not.

3 Q. Okay. I'll talk to Agent Nugent about his interview if
4 you're saying you don't remember that. Okay.

5 On that same date --

6 MR. FINK: Judge, may I approach?

7 THE COURT: Yes, you may.

8 BY MR. FINK:

9 Q. On that same date you -- August 6 of 2016 you wrote a
10 report titled "Details of the seizure of Didani's
11 Two Cellphones." Do you recall that?

12 A. Yes, sir.

13 Q. Okay. And this report is authored by you; correct?

14 A. Correct.

15 Q. And this is basically a summary of the evidence that was
16 taken off of Mr. Didani; is that accurate?

17 A. That is.

18 Q. Okay. And you write in this report -- and correct me if
19 I'm reading this incorrectly. I'll tell you where it is in a
20 moment.

21 So the big -- the last big paragraph, okay, the
22 second-to-the-last sentence that starts due "to the controlled
23 substance," do you see that? So second-to-the-last sentence of
24 the last big paragraph.

25 A. Okay.

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1 Q. I'm going to read from this report, and you just tell me
2 if you recall this. "Due to the controlled substance and the
3 fact that both phones appear to be encrypted and cannot be
4 forensically examined at the Detroit SAC office, a search and
5 seizure warrant was issued on August 17th, 2016, and both
6 phones were seized on September 2nd of 2016."

7 Did I read that correctly?

8 A. Yes.

9 Q. I typed it so if I missed a word that's important, tell
10 me, but do you recall writing this now looking at it?

11 A. Yes.

12 Q. Okay. So help me understand the process of what happened
13 in this instance to the best of your understanding. Didani is
14 interviewed by Special Agent Nugent; correct?

15 A. To the best of my knowledge, yes.

16 Q. You know that from his summary; right?

17 A. Yes.

18 Q. And he called you after the fact to tell you he had taken
19 two cellphones from him; correct?

20 A. Correct.

21 Q. Okay. And those phones were taken August 6 of 2016;
22 right?

23 A. Yes.

24 Q. And you write in your report that a warrant was sought on
25 August 17th of 2016; do you see that?

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1 A. I do.

2 Q. That was 11 days later; right?

3 A. Yes, sir.

4 Q. Okay. And then you write that the phones were seized on
5 September 2nd, 2016, which was actually a few weeks after the
6 warrant and after the phones were taken -- about a month after
7 the phones were taken. Can you tell me what you mean by that,
8 both phones were seized on September 2, 2016?

9 A. Yes, sir.

10 Q. Please.

11 A. There was an exhibit where I took possession of the
12 phones. I believe the date was August 15.

13 Q. So what you mean by that is when you took possession of
14 the cellphones; correct?

15 A. Physically.

16 Q. Because the phones were seized on August 6 of 2016, you
17 don't disagree with that; right?

18 A. No, I -- the phones were seized when we got the search and
19 seizure warrant.

20 Q. Well, let me ask you that. The phones -- we don't have to
21 use a buzz word like seized if you don't want to. We can
22 use -- the phones were taken from Ylli Didani's possession and
23 taken into law enforcement's possession on August 6 of 2016.
24 Is that accurate?

25 A. Yes, sir.

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1 Q. You applied and received a search and seizure warrant on
2 August 17th of 2016?

3 A. Yes, sir.

4 Q. And you, Agent Bianchi, actually physically possessed
5 those phones on September 2nd of 2016 or at least that's what
6 you think you mean by this?

7 A. I could tell you in one second.

8 Q. And I assume you're going to refer to the receipt?

9 A. Yes, sir.

10 Q. Okay. Go ahead.

11 MR. FINK: Judge, this was something relied upon in
12 direct examination. I have no problem with that.

13 THE COURT: Okay.

14 THE WITNESS: So can you repeat the question?

15 BY MR. FINK:

16 Q. I just want to make sure that when you said both phones
17 were seized on September 2, 2016, you are just referring to you
18 taking physical possession, you are not saying that they were
19 somehow not taken until that day?

20 A. Correct.

21 Q. Just trying to understand what you meant. You took them?

22 A. Yes.

23 Q. Okay. Thank you.

24 Now, in 2015, July 30 of 2015, you made an image of the
25 entire phone that Ylli Didani had on him that day; right?

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1 A. No, I did not, and --

2 Q. I'm sorry, I'm being imprecise.

3 A. Whatever they could get, they could get.

4 Q. You asked Customs and Border Patrol to make an image, the
5 most inclusive they possibly could, of the phone that
6 Ylli Didani had on July 30, 2015; right?

7 A. Yes, sir.

8 Q. And you reviewed everything that was possible to review in
9 that phone in August and the coming months after that in 2015;
10 right?

11 A. Yes, sir.

12 Q. You did not have a warrant to do that; right?

13 A. Correct.

14 Q. This time you applied for a warrant 11 days later before
15 looking at the phone. Is that accurate?

16 A. That is correct.

17 Q. And that's because the government suggested that you do
18 that; right?

19 A. No.

20 Q. Okay. Why did you seek a warrant this time when the
21 previous phone that you had you believed you could just look
22 through without a warrant?

23 A. It was more due to the criminal activity that we thought
24 was on the 2016 phones.

25 Q. So let's break that down. In 2015 you went through the

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1 image of the phone without -- you made a decision not to ask
2 for a warrant and went through it without a warrant, and you're
3 saying the difference just now, if I'm understanding you, is
4 that the criminality in 2016 was different. Is that what
5 you're saying?

6 A. No.

7 Q. Okay. Explain to me why you felt it necessary to obtain a
8 warrant in 2016 for the phones that you seized at the border
9 but not necessary to obtain a warrant in 2015 for the phone
10 that you copied at the border?

11 A. There was -- first, we have border search authority so I
12 don't need a warrant. I just need reasonable suspicion.

13 Q. Okay. Let's stop there. You don't need a warrant in your
14 estimation. You believe you have the border authority to do
15 it. So why didn't you just search the phone? Why did you get
16 a warrant on August 17, 2016?

17 A. Because I wanted -- after what we had saw, we did do that.
18 After what we saw on the phone, we did a search and seizure
19 warrant.

20 Q. But you didn't need one, you said; right? You could just
21 do it at the border is your understanding. That's what you
22 just told me, that you have the authority under the border
23 exception to review the phone without a warrant. This time you
24 sought a warrant, and I'm asking why.

25 A. This is -- suggestion is mostly because if you are doing a

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1 border search you are returning the item back to the person.

2 This was not returned back to them.

3 Q. So the only difference you're making is because you had to
4 return the physical phone you think you need to get a warrant,
5 whereas if you don't have the physical phones, you don't need
6 one?

7 A. Say that one more time.

8 Q. If I'm understanding your distinction, you are saying the
9 reason you sought a warrant in 2016 was because you were going
10 to keep the phones, whereas in 2015 he had his phone back;
11 that's the reason you asked for a warrant in 2016?

12 A. That is one of many reasons.

13 Q. Give me the other many reasons.

14 A. The evidence that was on the phone that showed criminal
15 activity.

16 Q. So did you review the phones before you obtained the
17 warrant on August 17, 2016?

18 A. Yes. They were searched, border-searched.

19 Q. Okay. So between August 6 and August 17th using the
20 border search exception there was warrantless entry into the
21 two cellular phones that were seized before a warrant was
22 obtained 11 days later. Is that what you just testified to?

23 A. That is correct.

24 Q. Okay. So in those 11 days law enforcement -- you may have
25 been on leave, but it's your understanding that the phones were

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1 searched in those 11 days prior to the obtaining of a search
2 warrant?

3 A. Prior -- yes.

4 Q. And then once you realized that there was bad stuff or
5 criminality on that phone, you decided to apply for a warrant
6 on August 17th, 2016?

7 A. With other circumstances, but yes.

8 Q. Okay. Well, you signed the search warrant affidavit so
9 I'm asking you --

10 A. Yes.

11 Q. -- what motivated --

12 You searched the phones without a warrant, and you just
13 told me you thought you had the authority to do that.

14 A. I do.

15 Q. Now you are saying again that you do. Okay. I'm hearing
16 you on that.

17 A. Yes.

18 Q. I'm asking you why then did you apply for a warrant at
19 all, and I asked you is it because the government suggested you
20 do that?

21 A. Uhm, at this point there's multiple reasons. It's what we
22 do in investigations.

23 Q. Give me the multiple reasons. Number one.

24 A. We are seizing his cellphone. We need a search and
25 seizure warrant to do that.

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1 Q. But you didn't in 2015.

2 A. We did not seize his phone in 2015. We gave his phone
3 back.

4 Q. So your distinguishing factor is that because you seized
5 the phones in 2016 that required a warrant; correct? That's
6 one distinguishing factor.

7 A. One distinguishing factor.

8 Q. Yet you did have the phones for 11 days and reviewed them
9 without a warrant until you applied for it 11 days later; is
10 that correct?

11 A. Can you state that again?

12 Q. For 11 days, August 6 to August 17, 2016, you testified
13 that the phones were reviewed by law enforcement before a
14 warrant was ever applied for. Do you recall just testifying to
15 that about five minutes ago?

16 A. Yes.

17 Q. Okay. And you had physical possession of the phones in
18 this instance when you were reviewing them; correct?

19 A. Only from the 15th to the 17th. Two days.

20 Q. Okay. So the distinction that you're making between the
21 two times, the time that you didn't apply for a warrant and the
22 time you did, really don't make sense, do they?

23 A. They do to me.

24 Q. Okay. Well, fair enough. What's the next reason of the
25 many reasons why you sought a warrant this time but not in

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1 2015.

2 A. The totality of everything we have been talking about.

3 Q. Well, we had a totality up to 2015, and you didn't seek a
4 warrant.

5 A. I don't know what --

6 Q. Did you think perhaps maybe it's safer, better safe than
7 sorry? Is that an element of the reason you sought a warrant?

8 A. No, we were going to search the phone no matter what. It
9 would have been searched whether we had a search warrant or
10 not.

11 Q. So you don't really have -- can't give me an answer then
12 as to why you sought a search warrant, just --

13 A. Other than what I have already stated.

14 Q. Other than what?

15 A. What I have already stated.

16 Q. I'm not sure what you have already stated. You said that
17 you had physical possession of the phones. You said there was
18 many reasons so I asked you for the next reason, and I haven't
19 heard one. So is there another reason or was that the reason?

20 A. Sure.

21 Q. That's the only reason, because you had physical
22 possession of the phone?

23 MR. BILKOVIC: Objection. I think that's a
24 mischaracterization of the testimony. He indicated the
25 differences between this and 2015 is here they actually had the

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1 phones where in 2015 they didn't, and here during a manual
2 search of the phone that somebody else did there was evidence
3 or indications with respect to drug trafficking.

4 **MR. FINK:** Judge, I don't know how many times I have
5 said why. I'm giving every opportunity. I'm not --

6 **THE COURT:** I'm not sure what your objection is.
7 What's your objection?

8 **MR. BILKOVIC:** He's mischaracterizing this witness's
9 testimony. Mr. Fink said the only reason was that you had
10 seized the phones. That's not true. This agent also testified
11 another reason was that they did a manual review of the phone
12 and there was evidence on there of drug trafficking.

13 **THE COURT:** He didn't say that just now. He said
14 that earlier.

15 **MR. BILKOVIC:** Exactly, right, earlier.

16 **THE COURT:** So --

17 **MR. FINK:** And that's how cross-examine works; right,
18 Judge?

19 **THE COURT:** I was going to say it's
20 cross-examination, but that may come under the totality of the
21 circumstances, but you may pose a new question if you'd like.

22 **MR. FINK:** Thank you, Your Honor.

23 **THE COURT:** That objection is overruled because I
24 don't think he mischaracterized his answer to this current
25 question.

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1 **MR. FINK:** Thank you, Your Honor.

2 **BY MR. FINK:**

3 **Q.** Listen, this is not a trap. I'm asking you to list the
4 reasons why, and rarely do I ask why on cross-examination.

5 **A.** No, that's fine.

6 **Q.** The floor is yours. Why in 2016 did you find it necessary
7 after searching the phones manually for 11 days to apply for a
8 search warrant, whereas in 2015 you had the phone for a year to
9 view at your pleasure without a warrant? I'm asking you for
10 the list of reasons why, one to whatever.

11 **A.** I will start back at the beginning.

12 **Q.** Let's do it. Number one.

13 **A.** And, to clarify, I only had the phone for two days. You
14 keep saying 11 days.

15 **Q.** All right. Law enforcement had the phone for 11 days;
16 would you agree with me?

17 **A.** Sure.

18 **Q.** August 6 to August 17; correct?

19 **A.** Correct.

20 **Q.** And you testified that law enforcement, maybe not you, so
21 I'm using the "you" as a generic term for law enforcement, law
22 enforcement you said reviewed the contents of the phone during
23 those 11 days without a warrant. Do you recall saying --
24 testifying to that?

25 **A.** Correct.

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1 Q. Okay. So, again, my question is: In 2016 -- on
2 August 17th, 2016, you signed a sworn affidavit to Magistrate
3 Judge Grand in this courthouse, and you said for all of these
4 reasons, Judge, I need a warrant to look at these two phones,
5 yet you did not believe that to be necessary in 2015, and I'm
6 asking you, what changed?

7 A. Just to be clear, I did not need that in 2016 either.

8 Q. So why did you do it?

9 A. Just documentation and the fact that we were seizing the
10 phones for evidence.

11 Q. So, again, so I don't mischaracterize you, the only
12 difference that you are telling me now, presently, is you don't
13 believe you needed a warrant, but you did it because you had
14 physical possession of the phones as opposed to in 2015, you
15 merely had a copy. That is your answer to my question?

16 A. Yes.

17 Q. Thank you.

18 MR. FINK: Your Honor, may I approach the witness?

19 THE COURT: You may.

20 MR. FINK: I have just spoken to the prosecutor,
21 Judge, and I think we're going to stipulate. I'll put a tag on
22 this in a moment as Defendant's Exhibit 1 entry into evidence.
23 This is a report by Agent Bianchi titled "Photos and Messages
24 from Didani's Cellphone." I'd like to admit this report only
25 for purposes of showing that evidence was obtained from the

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1 phones. This report has screen shots and some examples of some
2 of the things that were on the Blackberry and iPhone. The
3 government doesn't have objection to admitting it for that
4 purpose, to show that evidence was indeed extracted from the
5 phones, so I propose that be admitted as Defendant's 1.

6 **THE COURT:** Okay. Any objection?

7 **MR. BILKOVIC:** No, Your Honor.

8 **THE COURT:** It's admitted.

9 **BY MR. FINK:**

10 **Q.** We just admitted, Agent Bianchi, this document that I
11 handed to you, and this is a report dated September 28, 2017.
12 Do you see that?

13 **A.** Yes, sir.

14 **Q.** It's titled "Photos and Messages from Didani's
15 Cellphones"?

16 **A.** Yes, sir.

17 **Q.** And it's authored by you?

18 **A.** Yes, sir.

19 **Q.** If you just take a generic look at this, I'll let the
20 document speak for itself, but if you look at this through this
21 report that you authored, essentially these are screenshots and
22 other evidence and summaries of what was obtained from those
23 two cellphones that were seized August 6 of 2016. Is that a
24 fair characterization?

25 **A.** Yes, sir.

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1 Q. Thank you, Agent.

2 Agent Bianchi, you testified that you have been I think --
3 I'm going back to that confusion again -- United States Border
4 Patrol since -- in various capacities since 2003; correct?

5 A. Yes, sir.

6 Q. This may be a very difficult estimation to make so do your
7 best. How many times would you say in that 20-year career you
8 have made use of the border exception to search phones without
9 a warrant?

10 And you can say it's been hundreds, thousands, whatever
11 you can estimate the best.

12 A. Up to this point?

13 Q. It's through today.

14 A. I have no idea.

15 Q. Are we talking hundreds, thousands of people?

16 A. I could tell you up to this point.

17 Q. Yeah.

18 A. Zero times.

19 Q. You had never done it before?

20 A. Correct.

21 Q. Since then have you?

22 A. Yes.

23 **THE COURT:** Well, I want to be sure I understand
24 this. Your answer is never before this time of Mr. Didani's
25 phone had you searched the phones without a warrant? Is that

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1 what you're saying?

2 **THE WITNESS:** Correct.

3 **THE COURT:** And so had you always had a warrant
4 before?

5 **THE WITNESS:** No. Usually when we get people at the
6 border there's -- either there's no phones or it's out of our
7 grasp. This was initially when I got put on the task force of
8 the HSI investigation.

9 **BY MR. FINK:**

10 **Q.** So in Border Patrol in any capacity -- I recognize that
11 you are not necessarily ports of entry so you wouldn't
12 ordinarily be doing this stuff. My question is just solely
13 have you ever had a time like this one where you have been part
14 of some secondary search where you go through someone's phone?

15 **A.** Yes.

16 **Q.** Pre-Didani ever?

17 **A.** Oh.

18 **Q.** Pre your encounter in July of 2015 had you ever done that
19 before?

20 **A.** No.

21 **Q.** Post July of 2015 -- well, let's say post August 6, 2016,
22 how many occasions have you been a part of that?

23 **THE COURT:** Part of what?

24 **MR. FINK:** A part of reviewing a phone during a
25 border search manually.

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1 **THE WITNESS:** I can't recall.

2 **BY MR. FINK:**

3 Q. Dozens?

4 A. Dozens, yes. Lots.

5 Q. Hundreds or less than a hundred?

6 A. I have no idea.

7 Q. Okay. Are they all related to this case or different
8 cases?

9 A. Different.

10 Q. Okay. So the first time you ever did it was with
11 Mr. Didani in your 2015 encounter; correct?

12 A. Yes.

13 Q. And since you have done it -- 100 times since or so?

14 A. I can't recall.

15 Q. About that. Dozens?

16 A. Dozens.

17 Q. Okay. How would you characterize the evidence that was
18 obtained from the two cellphones that were seized from
19 Mr. Didani in August of 2016? And what I mean by that is how
20 would you characterize it in terms of evidentiary value?

21 A. I don't know.

22 Q. Was it important to the case? Was it unimportant to the
23 case? What you found on those phones.

24 A. I would say it was important.

25 Q. Did it lead to a lot of other important findings about

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1 Mr. Didani?

2 A. Yes.

3 Q. Do you think you would have been able to be here today
4 without the content that was found on those phones and what it
5 led to?

6 A. I don't know.

7 Q. Possibly not?

8 A. Possibly.

9 Q. Agent, when -- this is total ignorance, I don't know the
10 answer to this, but when law enforcement is putting together
11 discovery in a federal case -- right? -- like when federal
12 prosecutors are involved and they are asking you for your
13 reports, is that a collaborative effort to like get what we
14 call discovery together? Do you know what I mean by that
15 question?

16 A. Yes, sir.

17 Q. Is the answer to that yes, that it's a collaborative
18 effort?

19 A. I would think so.

20 Q. Does the government contact you and say, hi, Agent, we
21 have indicted this case and we need to get all of your reports
22 together? How does that conversation go and start?

23 A. They just ask for all of your case reports.

24 Q. Could it be informal like phone call, email, whatever?

25 A. Yes.

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1 Q. Okay. And they will ask you for everything you have
2 related to a certain case?

3 A. Yes, sir.

4 Q. And then I imagine in the future they might follow up with
5 specific things they might need; right?

6 A. Yes, sir.

7 Q. Okay. You testified, I believe at the beginning, that you
8 had familiarity with policies and procedures surrounding HSI;
9 right?

10 A. Yes, sir.

11 Q. And you talked about the 30-day rule. Do you recall that
12 on direct examination?

13 A. Yes, sir.

14 Q. Okay. And what rule is that that you are allowed to keep
15 a phone for 30 days without permission? Do you know what rule
16 number that is?

17 A. I do not.

18 Q. Okay. Do you know precisely what it says?

19 A. I do not.

20 Q. Do you know the content of the rule, what it requires?

21 A. If I read it.

22 Q. Okay.

23 A. Are you -- I know that you are able to take electronic
24 media and hold them to be searched for up to 30 days per HSI
25 policy.

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1 Q. When this case was indicted, were you the special agent in
2 charge of this case?

3 A. No.

4 Q. Is that Special Agent Leach? Who was the person in
5 charge?

6 A. I do not know, sir.

7 Q. When it was indicted, do you remember working with other
8 agents and the government lawyers to get together -- I started
9 to ask you about discovery. Were you part of that process?

10 A. A part of my discovery process, yes.

11 MR. FINK: I want to approach and just ask a question
12 about a document, Judge, if he recognizes it, okay?

13 I want to show it to the government. May I?

14 THE COURT: You may.

15 One second.

16 (Discussion held off the record.)

17 (Brief recess to switch court reporters.)

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1 LAW CLERK: Recalling Case Number 21-20264, United
2 States of America versus Ylli Didani.

3 Appearances, please, again.

4 MR. BILKOVIC: Mark Bilkovic and Tim McDonald on
5 behalf of the United States.

6 MR. FINK: Good afternoon, Judge. Wade Fink and Brian
7 Kaplan on behalf of the Defendant, Ylli Didani, who is present
8 and sitting at counsel table.

9 THE COURT: Okay. Thank you. Since you're already
10 sworn, just state your name again and spell your last name
11 again.

12 THE WITNESS: Joshua Bianchi, B-I-A-N-C-H-I.

13 THE COURT: Okay. Thank you. You may continue.
14 Are we ready to go?

15 COURT REPORTER: Yes.

16 THE COURT: Okay. You may continue.

17 MR. FINK: Agent Bianchi, I'm almost finished, and I
18 think we're going be able to do this by stipulation.

19 Your Honor, I have presented through Agent Bianchi,
20 but he wasn't necessarily the person who produced this to the
21 government, so I think we're just going to do this by
22 stipulation, I received in discovery two copies of Customs and
23 Border Protection policies, CBP policies, that were produced to
24 me under --

25 May I approach the witness just to get the number,

1 Judge?

2 THE COURT: You may.

3 MR. FINK: So, your Honor, the government produced to
4 the defense in Bates label Didani-08103 through Didani-08112,
5 and then again Didani-08191 through Didani-08102.

6 THE COURT: Read the second line again. 08 ...

7 MR. FINK: Didani-08091 through Didani-08102. The
8 government produced to the defense two different United States
9 Customs and Border Protection policies that we will probably
10 discuss further in briefing or argument, but that spell a
11 different time period than the 30 days that was mentioned on
12 direct examination. The government is agreeing to this
13 admission by stipulation. I don't think this is the proper
14 witness to -- I'm going to ask him, but the government has
15 agreed to admit these two policies as having been produced to
16 the defense.

17 THE COURT: Are they going to be marked as exhibits?

18 MR. FINK: No. They will be marked as -- the first
19 one is Defendant's 2 and the second one is Defendant's 3.

20 THE COURT: Okay. And is the government stipulation
21 that they're admitted?

22 MR. BILKOVIC: Yes, your Honor.

23 MR. FINK: Just for the purpose, Judge, to be clear
24 what I said to Mr. Bilkovic, the purpose that it was produced
25 to the defense.

1 THE COURT: Okay.

2 MR. FINK: Thank you.

3 BY MR. FINK:

4 Q. Agent Bianchi, and I've been informed it may not have been
5 you who gathered this so the answer can be "I just don't know,"
6 but do you recognize what I put in front of you at all,
7 Defendant's 2 and 3?

8 A. After reading it, I know what it is.

9 Q. Okay. Can you just basically describe what they are?

10 A. It looks like CBP's policy for Border Search of Electronic
11 Devices.

12 Q. Are you reading the one -- what's the date of that one at
13 the top?

14 A. August 20, 2009.

15 Q. Pick up the other one and read the date on Defendant's 2.

16 A. January 4, 2018.

17 Q. That's the more recent one. So Defendant's 2, the same
18 concept, but it's dated 2018; correct?

19 A. Correct.

20 Q. Okay. Have you ever interacted with this rule in any
21 capacity? Have you seen it before? Do you know what it is
22 outside of just reading it? Like have you had experience with
23 that rule?

24 A. With the Border Search of Electronic Devices?

25 Q. Under CBP's policies.

1 A. Under CBP's policy, yes.

2 Q. Okay. You have. And is it your understanding under Rule 8
3 that general CBP policy is that you may detain a phone for up
4 to five days, but get clearance for an additional five days
5 from the permission of a supervisor? Is that your
6 understanding of the rule?

7 A. I'm not sure.

8 Q. That's okay. But you've identified what they were for
9 purposes of the record, which is sufficient for me, so we can
10 move on from there.

11 A. But don't look it up.

12 Q. No, that's okay. Because if you don't know, if you haven't
13 interacted with it before, I don't want you to guess.

14 All right. I'm basically finish. I just I wanted to
15 inquire as just, you know, back to the very first question you
16 were asked about your experience and training, Agent Bianchi.
17 As a United States Border Patrol officer, we've now clarified
18 that Border Patrol really doesn't typically interact with
19 travelers all that often, right, or do they?

20 A. Quite frequently.

21 Q. Okay.

22 A. Not -- I would say we interact with more illegal travelers.

23 Q. Well, prospective legal travelers; right? It's not like
24 CBP officers sitting at a booth and, you know, constantly
25 seeing people come in and making random checks? It's different

1 from that; right?

2 A. It's different from that, yes.

3 Q. Okay. Because an ordinary CBP officer doing routine stops
4 may be for more varied reasons than would be for you; is that
5 accurate?

6 A. Yes.

7 Q. In other words, you have a reason for when you want to talk
8 to someone, and you get involved? Is that an accurate
9 statement?

10 A. Depending, but yes.

11 Q. But usually you have some investigation or some purpose in
12 reaching out to CBP to interview for you; is that accurate?

13 A. Yes.

14 MR. FINK: One moment and I think I'm almost ...

15 (At 2:00 p.m., briefly off the record.)

16 BY MR. FINK:

17 Q. Did you receive, Agent Bianchi, any specific training from
18 HSI or CPB about their border search policies? We were
19 discussing the CBP rule, but have you received any trainings
20 about that or similar rules?

21 A. Yes.

22 Q. Can you describe that training that you've received?

23 A. It was in 2003 at the academy. I went through border
24 search authority training, both immigration and criminal, and
25 Title 19 training, cross-designation training. In 2006 is when

1 I received the training, and I -- it was required of all task
2 force officers when I got on the HSI task force in 2014.

3 Q. Okay. That training in 2003, like at the academy, for
4 example, do they review all Homeland Security department's
5 policies or specific to the ones that you're applying for?
6 Because you said policies, which ones are you being trained on,
7 particularly to what you're applying for or all departments'
8 policies?

9 A. I would have to look that up, sir. I don't recall.

10 Q. You don't remember?

11 A. That was 20 years ago.

12 Q. Like are you trained on CBP policies as well as HSI
13 policies, do you know?

14 A. I was when I got on the HSI task force.

15 Q. Okay. In 2003 were you trained -- is there specific United
16 States Border Patrol policies, for example, that you were
17 trained on?

18 A. I --

19 Q. In 2003 you were hired by United States Border Patrol;
20 right?

21 A. Yes, sir.

22 Q. Okay. And that 2003 training, was that specific to the
23 United States Border Patrol?

24 A. Yes.

25 Q. It is specific?

1 A. Yes, sir. Yes.

2 Q. So it's not necessarily to all departmental Homeland
3 Security policies and departments?

4 A. Correct. There's many agencies in our department of
5 Homeland Security.

6 Q. And when you said then when you joined HSI you were trained
7 on their policies; correct?

8 A. Yes.

9 Q. Okay.

10 A. Their task force.

11 Q. Now, I want to ask very specific. You said you don't know
12 the rule number, the 30-day rule number; correct?

13 A. Correct.

14 Q. Now, can you tell me anything else about the rule from your
15 recollection without looking at it, based on your training and
16 experience, what you are allowed to do with cell phones and
17 their seizure under the HSI policy?

18 Let's start with this. How long are you allowed to
19 detain and seize cell phones?

20 A. To my knowledge, it depends on -- each circumstance is
21 different.

22 Q. Okay. You have to apply for an additional time period to
23 the 30 days you mentioned on direct exam?

24 A. Yes.

25 Q. What has to happen before that 30 days in your experience

1 and training?

2 A. What needs to happen for --

3 Q. Yes. What do you have to do within that 30 days?

4 A. Complete your border search of that device and determine
5 which route you're going to take, whether you want to get a
6 search warrant, whether you're going to return the device to
7 the individual, what's -- depending on the investigation and
8 what's going to happen.

9 MR. FINK: Okay. I'm going to leave those documents
10 with you for redirect, but I'll come get them afterwards.
11 That's all I have for the time being. It was nice to meet you.
12 Thank you, Agent.

13 THE WITNESS: Thank you, sir.

14 MR. BILKOVIC: Your Honor, can I redirect very
15 briefly?

16 THE COURT: You may.

17 REDIRECT EXAMINATION

18 BY MR. BILKOVIC:

19 Q. Agent Bianchi, you had testified that up until this case
20 you had not done one of these searches of the cell phones. Is
21 part of the reason for that is because you didn't do that in
22 your role with United States Border Patrol?

23 A. That is correct.

24 Q. So it was when you started working as a task force officer
25 with HSI?

1 A. Correct.

2 Q. And we discussed the CBP policies. Mr. Fink brought them
3 up to you. But in this case you were being guided by --
4 because you were HSI, you were being guided by ICE, which is
5 over HSI? You would be guided by ICE policies?

6 MR. FINK: Objection, your Honor. I think that's a
7 legal conclusion he's asking for, that the court is going to
8 have to resolve what policy should have been followed.

9 THE COURT: I think I am going to probably decide what
10 policy should have been followed, but he can ask him what ones
11 he was guided by in this instance.

12 MR. FINK: Okay, Judge.

13 THE WITNESS: I was guided by HSI, sir.

14 MR. BILKOVIC: May I approach, your Honor?

15 THE COURT: Yes, you may.

16 BY MR. BILKOVIC:

17 Q. I'm showing you what's been marked government's proposed
18 Exhibits 7, 8 and 9. Mr. Fink went through one report from
19 2008 with you that mentioned Mr. Didani; correct?

20 A. Yes, sir.

21 Q. Those reports that you have there that I've handed you, 6,
22 7 and 8, do those also mention Mr. Didani?

23 A. I believe so, sir.

24 Q. Can you review them briefly, or please skim through them
25 just to make sure.

1 MR. FINK: Judge, I don't mean to be difficult, but I
2 think the foundation to lay here is does he remember anything
3 else from 2008. And if he needs to refresh with these reports
4 he can, but I don't know that he should be able to just
5 automatically look at what's in them. I don't think he --

6 THE COURT: I agree with that. Are you going to ask
7 him something about what's in these?

8 MR. BILKOVIC: I am, and maybe I can do it --

9 THE COURT: Ask him, and then if he doesn't remember
10 he can look at them.

11 BY MR. BILKOVIC:

12 Q. I'll ask you this. The one report from 2008, was that the
13 -- don't look at those right now -- was that the only report
14 that you reviewed prior to July 2015 that dealt with this
15 investigation into Mr. Didani in 2008?

16 A. Absolutely not.

17 Q. Were there multiple --

18 THE COURT: I don't understand that question, because
19 you said were there other reports in 2008?

20 MR. BILKOVIC: Yeah.

21 BY MR. BILKOVIC:

22 Q. Mr. Fink showed you a report from 2008 that mentioned --

23 THE COURT: Was there only one that he was shown from
24 2008?

25 MR. BILKOVIC: That's what I thought. I thought that

1 Mr. Fink had only shown him one.

2 MR. FINK: That's accurate. I think the June 2nd is
3 what I showed you, Agent. I think that's correct.

4 THE COURT: All right. Okay. Go ahead then.

5 BY MR. BILKOVIC:

6 Q. Were there additional reports from 2008 that also detailed
7 the investigation into Mr. Didani?

8 A. Yes.

9 Q. And prior to July 2015 did you review those reports?

10 A. I did.

11 Q. And was the information in those reports, did that also go
12 into your ultimate decisions in this case?

13 A. Yes, it did.

14 Q. Are three of those reports in front of you, 6, 7 and 8?

15 A. Yes, sir.

16 MR. BILKOVIC: Now, at this time for purposes of --

17 THE WITNESS: 7, 8 and 9.

18 MR. BILKOVIC: I'm sorry. 7, 8 and 9.

19 Your Honor, at this time for purposes of this hearing
20 I would move to admit Government's Exhibits 7, 8 and 9 into the
21 record.

22 THE COURT: Any objection?

23 MR. FINK: I appreciate the government is working with
24 me on other documents, but I'm having trouble understanding why
25 this wouldn't be hearsay to admit the report itself. I guess

1 his testimony about his recollection -- I'm sorry. I'm
2 thinking through this objection out loud, Judge.

3 My objection would be that it's hearsay, and it would
4 be more proper what he remembers from this report and what he
5 remembers reviewing, not necessarily the report itself.

6 MR. BILKOVIC: Judge, this is -- and just in response,
7 I agree it's hearsay, but one of the determinations the court
8 is going to have to make is what information he had that he
9 relied on back in 2015 and 2016, whether he specifically
10 recalls all of that information in 2023. And he's just
11 testified that he did read these reports prior to July of 2015,
12 and that the information contained in those reports were
13 additional reasons -- or additional information that he had
14 that guided his ultimate decisions in this case.

15 THE COURT: I'm going to allow it for that purpose.
16 Your objection is overruled.

17 MR. FINK: Thank you, Judge.

18 THE COURT: Are these the reports that you wrote?

19 THE WITNESS: These particular ones are not, ma'am.

20 THE COURT: All right. Go ahead.

21 BY MR. BILKOVIC:

22 Q. And are those reports dated, just for the record?

23 A. Yes --

24 Q. You don't have to tell me the dates. There are dates on
25 there in those reports?

1 A. Yes, sir.

2 THE COURT: Yeah. I think he ought to give us the
3 dates.

4 BY MR. BILKOVIC:

5 Q. Okay. Start with 7. When was that dated?

6 A. Seven was dated 11-4 of 2008.

7 Q. And what was 8?

8 A. 6-30 of 2008.

9 Q. And Exhibit 9?

10 A. 8-14 of 2008.

11 THE COURT: Okay.

12 MR. BILKOVIC: Can I move on?

13 THE COURT: Um-hmm.

14 MR. BILKOVIC: Thank you.

15 BY MR. BILKOVIC:

16 Q. Now, you had talked about an individual by the name of Don
17 Larson on cross-examination?

18 A. Yes, sir.

19 Q. And with respect to Mr. Larson, I think you had testified
20 about five wires that he had sent Mr. Didani?

21 A. Yes, sir.

22 Q. And I believe that when Mr. Fink was going through that
23 with you he was referring to your September 11, 2015 report?

24 A. Okay.

25 Q. You have that report with you? I don't want you to look at

1 it. I just want to see if you have it up there in case I have
2 to ask you questions from it.

3 A. Yes, sir.

4 Q. Do you remember what the time frame was of these five
5 wires? I don't want you to look at -- tell me if you remember.

6 A. I believe so, yes.

7 Q. Okay. What was the time frame of the five wires?

8 A. It was five wire transfers within a one-month period-ish.

9 Q. And do you recall -- one-month period-ish meaning
10 approximately a one-month period of time?

11 A. Yes, sir.

12 Q. And do you recall that approximate period of time?

13 A. I'd have to look at the report. It's during 2015.

14 MR. BILKOVIC: Your Honor, at this time I would
15 ask that --

16 BY MR. BILKOVIC:

17 Q. Would looking at your report refresh your memory, Agent
18 Bianchi? Would looking at your report refresh your memory?

19 A. Oh. Yes. I'm sorry.

20 THE COURT: Okay. He may.

21 THE WITNESS: Yes, sir. It was from May 19, 2015 to
22 June 23, 2015.

23 BY MR. BILKOVIC:

24 Q. And what about the amount of the wires? How much were
25 they?

1 A. Twenty-three thousand three hundred and twenty-two total.

2 Q. And I believe that you indicated that you reviewed a note
3 in the report with respect to what Mr. Larson said about these
4 wires back when he was interviewed about them?

5 A. Yes, sir.

6 Q. And what did he say about them?

7 A. He said he was a victim of an emergency funds scam.

8 Q. And? Anything else?

9 MR. FINK: Judge, I'm still having trouble
10 understanding if this is memory refreshed or if we're just
11 reading the report --

12 BY MR. BILKOVIC:

13 Q. Don't look at the report. I want you to tell me if you
14 remember and, if not, I'll ask you to look at your report.

15 A. Yeah. I do remember, yes, that he was sending Didani money
16 to get his passport back.

17 Q. And in that same report you indicate -- there was an
18 ongoing investigation in that same report. Is there any --
19 well, let me know if it's in that report. Did you ever see
20 Mr. Didani and Mr. Larson together in 2015?

21 A. Yes.

22 Q. And do you recall when that was?

23 A. The specific date?

24 Q. Month.

25 A. August of 2015.

1 Q. So this would have been after the airport encounter?

2 A. Correct.

3 Q. And where did you see them together?

4 A. At Mr. Larson's residence.

5 Q. And what city is that located in?

6 A. Fraser, I believe.

7 Q. And Mr. Fink asked you about Mr. Larson's background, and
8 you discussed a conviction that he had. And I'm going to ask
9 you whether or not -- I think you testified that he was
10 released on parole?

11 A. He was convicted to life in prison and I believe eventually
12 released on parole.

13 Q. Are you aware of whether he received a sentence of life and
14 then was released as a result of the change in Michigan's lifer
15 law or whether he received a sentence of up to life and got
16 paroled in the normal course of process?

17 A. I don't know.

18 Q. There was a discussion that Mr. Fink brought up to you
19 about a text message conversation that you had reviewed with
20 respect to some automobiles involving Mr. Didani and another
21 individual?

22 A. Yes, sir.

23 Q. Do you remember the details of that text message
24 conversation?

25 A. Somewhat.

1 Q. What do you remember about that text message conversation?

2 A. That somebody was trying to get a car. It was a Corvette.

3 They were -- if they got the car, it would be a done deal and

4 that person wouldn't owe him anymore money.

5 Q. Did you detail the exact -- did you basically copy and

6 paste the exact text message conversation and put it in your

7 report?

8 A. Yes, sir.

9 Q. And again, this was a conversation between Mr. Didani and

10 another individual who you indicated had a prior drug

11 trafficking history?

12 A. Yes, sir.

13 Q. Do you know the verbatim text messages without reviewing

14 it?

15 A. No, sir.

16 Q. Would reviewing it help you basically to give it to the

17 court in the manner which you saw it?

18 A. Yes, sir.

19 Q. Okay. If you could please look at that.

20 A. Which report?

21 Q. The September 11, 2015. And the first line is there an

22 entry you have in your report of Mr. Didani asking, "What's up

23 with the Corvette?"

24 A. Yes, sir.

25 Q. The person responds, "Yes, sir. This mother F got two of

1 them in his garage, brand new, zero miles, \$180,000 car"?

2 THE COURT: Are you going to read them all?

3 MR. BILKOVIC: I was only going to read one more after
4 this one.

5 THE COURT: Okay.

6 BY MR. BILKOVIC:

7 Q. Is that correct?

8 A. That is correct.

9 Q. And then Mr. Didani ends up responding after the person
10 indicates one other thing, "Okay. That's fine, let me know and
11 I come for the car from you. And, as I say, I will keep my
12 word with you. Once the car is out of the U.S. you don't owe
13 any money to anyone and you will get \$10,000 when the deal is
14 done"?

15 A. That is correct.

16 Q. So when we went through the facts you put that in there
17 because you believed, I think you testified, that that was
18 suspicious to you?

19 A. Yes, sir.

20 Q. Why?

21 A. He's essentially taking cash for exporting a vehicle. It
22 appears that it's going to be stolen.

23 Q. Pardon me?

24 A. It looks like it would be a stolen vehicle. If he gets
25 those cars for us and he would be paid for them, it looks like

1 suspicious criminal across border activity.

2 Q. And the text messages talked about "I have two Corvettes
3 with zero miles in my garage"; right?

4 A. Correct.

5 Q. Now, you don't know whether or not that's what they were
6 talking about; is that accurate?

7 A. That is true.

8 Q. But was that one more fact adding to the list of facts that
9 you had been compiling over the course of your investigation?

10 A. Yes, sir.

11 Q. And was it your entire investigation or one piece of
12 information that led you to want to copy and get a forensic
13 download of Mr. Didani's phone in July of 2015?

14 A. By far the entire thing.

15 Q. And from 2015 to 2016 was there additional information that
16 you had that led you to want to download the phone in 2016 when
17 Mr. Didani came into the country in August of 2016?

18 A. Yes.

19 Q. And was part of that information the interview that he gave
20 on August --

21 MR. FINK: Objection. That's been several leading
22 questions in a row.

23 BY MR. BILKOVIC:

24 Q. Did you offer additional reports in this case?

25 A. Yes.

1 Q. And do those reports detail -- or August -- let me ask you
2 this. Do those reports detail the aspects of your
3 investigation?

4 A. Yes, sir.

5 Q. And did Agent Nugent fill you in on the interview that was
6 done in Chicago?

7 A. Yes, sir.

8 Q. And I know you had mentioned that Agent Nugent did the
9 interview. You weren't in Chicago; correct?

10 A. Correct.

11 Q. So you don't know if it was Agent Nugent or Agent Parisi
12 and one of them relayed it to the other one? You don't know
13 for sure?

14 A. I do not.

15 Q. And they're both here today and they're going to testify;
16 correct?

17 A. Yes, sir.

18 MR. BILKOVIC: I have nothing further, your Honor.

19 THE COURT: Anything else for this witness?

20 MR. FINK: No, your Honor. Thank you.

21 THE COURT: You may step down. Thank you for coming.

22 THE WITNESS: Thank you, ma'am.

23 (At 2:19 p.m., the witness is excused.)

24 THE COURT: Do you gentlemen need a lunch break?

25 MR. FINK: It was my understanding, Judge -- it's

1 totally on your schedule. I understand you maybe had a 3:00 or
2 a 4:00. I mean, these two witnesses should be quick I know,
3 but --

4 THE COURT: Okay.

5 MR. FINK: I can keep going is my answer, but I don't
6 want to speak for everyone.

7 MR. BILKOVIC: It's up to you obviously, you and your
8 staff.

9 THE COURT: Okay. Let's take about ten minutes or 15;
10 okay?

11 MR. FINK: Okay.

12 MR. BILKOVIC: I would ask, Agent Bianchi had Tommy
13 John surgery on Thursday. I would ask that he be excused.

14 MR. FINK: Absolutely.

15 MR. BILKOVIC: Okay. Thank you.

16 THE COURT: All right. Let's take a break, okay.
17 Come back in about 15 minutes.

18 MR. BILKOVIC: Thank you, Judge.

19 (At 2:20 p.m., court is in recess. Back on the record
20 at 2:39 p.m.)

21 LAW CLERK: All rise. Court is back in session.

22 THE COURT: All right. You may call your next
23 witness, please.

24 MR. McDONALD: The government calls Matthew Parisi.

25 THE COURT: All right. You may step forward and be

1 sworn in. Right there, and raise your right hand.

2 (Oath administered.)

3 THE COURT: You may be seated. When you're seated,
4 state your full name and spell your last name for the record.

5 THE WITNESS: Yes, ma'am. My name is Matthew Parisi.
6 Last name spelling is P-A-R-I-S-I.

7

8 MATTHEW PARISI,

9 at 2:40 p.m. sworn as a witness, testified as follows:

10

11 DIRECT EXAMINATION

12 BY MR. McDONALD:

13 Q. Sir, where are you employed?

14 A. I'm currently employed with Customs and Border Protection
15 at Chicago O'Hare International Airport.

16 Q. For how long have you been employed with Customs and Border
17 Protection?

18 A. I've been there for 11 years.

19 Q. Prior to your employment with Customs and Border Protection
20 were you employed in any other law enforcement capacity?

21 A. No.

22 Q. Okay. And you said you're assigned to the Chicago O'Hare
23 area?

24 A. Yes, sir.

25 Q. You've been a Border Patrol office you said for 11 years?

1 A. I've been a Customs and Border Protection officer for 11
2 years, sir.

3 Q. All right. And starting back with your original
4 assignment, can you tell us where you were assigned?

5 A. I was in Calexico, California for about three and a half
6 years. That was my first duty station.

7 Q. What were you doing --

8 THE COURT: Four and a half years?

9 THE WITNESS: Three and a half years, ma'am.

10 THE COURT: Okay.

11 BY MR. McDONALD:

12 Q. What were you doing in Calexico, California?

13 A. I was a Customs and Border Protection officer, and I was at
14 the border facilitating legitimate trade and travel.

15 THE COURT: Legitimate what?

16 THE WITNESS: Trade and travel.

17 THE COURT: Okay.

18 BY MR. McDONALD:

19 Q. Make sure you use the microphone. You can maybe pull that
20 a little closer, so ...

21 THE COURT: Well, it may not go too much closer. And
22 you can't scoot up, but if you speak very loudly right there it
23 will come across.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Okay.

1 BY MR. McDONALD:

2 Q. Where, if anywhere, did you go after your assignment to
3 Calexico?

4 A. I was then sent to Chicago, Illinois.

5 Q. All right. And Chicago, Illinois field division or the
6 airport?

7 A. The airport. O'Hare International Airport.

8 Q. Have you been at the airport from -- I guess that would be
9 2004 to present day?

10 A. Right, 2014 to present date.

11 Q. Excuse me. 2014 to present day. When you first started at
12 the airport, can you tell us what your assignment was?

13 A. Yes. I was a part of the secondary enforcement unit, which
14 is basically what we do is immigration enforcement. So any
15 immigration case I oversaw and dictated if they would stay or
16 go back and be deported.

17 Q. After your assignment with secondary immigration what was
18 your next assignment?

19 A. I was assigned to the PERT team, which is the Passenger
20 Enforcement Rover Team, in which we go out and get lookouts,
21 TECS record lookouts, and then do an inspection based upon what
22 is being asked of the lookout.

23 Q. Okay. There's a couple terms you mentioned there that I
24 want you to explain a little more in-depth. You said something
25 about a lookout. What's a lookout?

1 A. Right. We have a system that Customs and Border Protection
2 uses. It's called TECS. I don't know the acronym name for it,
3 but that's the acronym, TECS, T-E-C-S, in which our agency,
4 CBP, as well as other federal law enforcement agencies are able
5 to put lookouts, which is basically a request that CBP does an
6 examination upon their entry into the United States.

7 Q. All right. And TECS is what?

8 A. It's a law enforcement database. It's a tool that we use.

9 Q. All right. And so for how long were you assigned with the
10 PERT team?

11 A. I was there for roughly two and a half years.

12 Q. In the course of your two and a half years with the PERT
13 team did you have occasion to conduct border examinations of
14 incoming passengers?

15 A. Yes.

16 Q. Have you had the occasion to detain cellular devices or
17 electronic devices during your time with the PERT team?

18 A. Yes.

19 Q. All right. After the PERT team what was your next
20 assignment?

21 A. I was then assigned to the tactic --

22 THE COURT: Before you go there, you were assigned to
23 -- what kind of team is it called?

24 THE WITNESS: It's called PERT, P-E-R-T. It's the
25 Passenger --

1 THE COURT: Oh, okay.

2 THE INTERPRETER: Passenger Enforcement Rover Team.

3 THE COURT: Okay. Thank you.

4 BY MR. McDONALD:

5 Q. So after your assignment with PERT where were you assigned?

6 A. I was assigned to the Tactical Terrorism Response Team.

7 Q. And that's commonly TTRT?

8 A. Yes, sir.

9 Q. What is the Tactical Terrorism Response Team?

10 A. Basically we do any investigations, including CT, which is
11 counterterrorism, or terrorism-related issues when somebody is
12 arriving abroad from an international country.

13 Q. How long were you assigned to the TTRT team?

14 A. I was there for three years.

15 Q. In the course of your assignment with TTRT did you have an
16 occasion to do border inspections of incoming passengers?

17 A. Yes, sir.

18 Q. In the course of your assignment with TTRT did you have an
19 occasion to detain cellular devices?

20 A. Yes, sir.

21 Q. During a border search?

22 A. Yes, sir.

23 Q. All right. What happens with your assignment after TTRT?

24 A. I then was promoted to a supervisory Customs and
25 Border Protection officer.

1 Q. What were your duties there?

2 A. During my tenure with being a supervisor, I worked at the
3 international mail facility, which we interdicted drugs coming
4 in from the mail facility and the DHL, which is -- I'm sorry,
5 ECC. I don't know the acronym, and I apologize. But from
6 there I was also a part of the antiterrorism contraband
7 enforcement team, which we did enforcement actions on any
8 drug-related issue coming in from the cargo environment. I was
9 then a supervisor of the global entry program and the holograms
10 program in which we do background investigations on anybody
11 applying for a SIDA badge to enter the airport and to be in the
12 federal inspection security area. And I currently am now an
13 acting chief of any -- I'm sorry, of any airport and
14 cargo-related issues on the midnight shift.

15 Q. Okay. So you're the current supervisor or the acting chief
16 of all cargo and air operations; is that fair?

17 A. Correct.

18 Q. Before we get to your training, I want to try to clarify
19 where your agency exists in the Department of Homeland
20 Security.

21 A. Yes, sir. So the Department of Homeland Security is the
22 department in which has three different sections. There is an
23 OFO part, there is a border patrol part, and there is a air and
24 marine part. OFO deals with any -- they facilitate legitimate
25 trade and travel any port of entry, which is an airport with an

1 international footprint or a land border that there's a port
2 that connects to an international to either Mexico or to
3 Canada.

4 Q. All right. Hold on just a second. So you said that
5 Customs and Border Protection is made up of three separate
6 subagencies?

7 A. Correct.

8 Q. And the first one you said was OFO. What does OFO mean?

9 A. That's where I fall under. They're usually called Customs
10 officers, and that's where I fall.

11 Q. Right. But the letters "OFO," what does that mean?

12 A. Office of Field Operations.

13 Q. Okay. And those are the individuals who are at ports of
14 entry or designated places of entry or international airports?

15 A. Yes, sir.

16 Q. All right. And that's the agency that you are employed by?

17 A. Yes, sir.

18 Q. What are the other two agencies?

19 A. The other agency is Border Patrol in which they are the
20 enforcement arm in-between the ports of entry. Anywhere
21 between -- if there's a border, they have 50 miles beyond that
22 border and that's where their jurisdiction is. So if there's
23 an airport circling around that airport for 50 miles they have
24 jurisdiction in that area.

25 Q. Okay. Are those the individuals in green uniforms that are

1 down usually at the southern border between the United States
2 and Mexico?

3 A. Yes.

4 Q. And those are with -- in-between ports?

5 A. Yes.

6 Q. And their duty is to what, interdict individuals trying to
7 enter the United States illegally?

8 A. Yes.

9 Q. Okay. And then the third division. So we have OFO and
10 Border Patrol. What's the third division?

11 A. Air and marine.

12 Q. And what does air and marine do?

13 A. The marine unit they patrol -- I don't know the mileage
14 beyond any of our shorelines, but they are basically our
15 enforcement arm with -- in the -- anywhere connecting to water
16 around the United States.

17 Q. Okay. And, as it sounds, they deal with marine operations
18 or those operations that occur in or over water and air
19 operations?

20 A. Air operations is our helo. They give us backup when we --
21 for any interdiction that Border Patrol usually utilizes. So
22 if they're in the field they usually have the helos out. So
23 they're able to identify where there's certain groups and
24 basically for video footage of any interdiction.

25 Q. When you say helo, you're talking about a helicopter?

1 A. Yes, sir.

2 Q. Okay. Now, let's talk briefly about your training as a
3 Customs and Border Patrol officer. When was the first training
4 you received?

5 A. I received it in -- I started in April 2012, and I finished
6 the academy -- to the best of my knowledge, I believe it was
7 September of 2012.

8 Q. All right. So the first training was at the CBP academy?

9 A. Yes.

10 Q. In the course of that training did you receive instruction
11 about border search?

12 A. Yes.

13 Q. Did you have an opportunity or an occasion to attend
14 training for the secondary enforcement immigration unit?

15 A. Yes.

16 Q. In the course of -- when was that training, do you recall?

17 A. That training was on-the-job training. So when I was put
18 on that team I was given three weeks on-the-job training in
19 which we went over any issue I would encounter while performing
20 my duties.

21 Q. All right. And during the secondary enforcement training
22 did you receive specific training as it relates to border
23 search?

24 A. Yes.

25 Q. Did you attend training for the PERT team?

1 A. I did.

2 Q. And do you remember when that training was?

3 A. I don't remember the date, but it was in Miami and it was
4 for a two-week period.

5 Q. Did that training involve at least some involvement with
6 border search?

7 A. Extensively.

8 Q. All right. And finally, TTRT training?

9 A. Yes, sir. I received on-the-job training. I as well went
10 to NTC, when is located in Virginia where I spent two weeks of
11 training. I also was on the JTTF training list in which I
12 spent two weeks with JTTF learning the procedures and the
13 questioning and the types of questions they look for and
14 basically providing them any information that they would need
15 to further an investigation.

16 Q. All right. Let's back up. You said JTC. Do you know what
17 that stands for, that acronym?

18 A. It's JTTF, which is the Joint Terrorism Task Force.

19 Q. All right. And what about NTC?

20 A. NTC is the National Targeting Center.

21 Q. All right. And so you said that your current role is
22 acting chief and you oversee all cargo and air operations. Can
23 you be just a little bit more specific as to what you do on a
24 day-to-day basis?

25 A. Absolutely. So any immigration expedited removal I have to

1 give the approval on. Any detainee issue I have to make sure
2 that they are taken care of. So basically any issue that comes
3 up I have to figure out a solution for it if the officer is not
4 able to. Any cargo environment that -- in the cargo
5 environment, if there's a seizure, I have to approve the
6 seizure and then facilitate the logistics of getting it to a
7 secure facility. I also do all administrative duties for those
8 shifts.

9 Q. All right. I want to direct your attention to August 6 of
10 2016. Were you employed with U.S. Customs and Border
11 Protection on that particular day?

12 A. Yes.

13 Q. And do you remember in terms of your assignment back in
14 2016, do you remember what your assignment was?

15 A. Yes.

16 Q. And what was it?

17 A. I was on the Passenger Enforcement Rover Team.

18 Q. And on that particular day did you have an occasion to
19 encounter an individual by the name of Ylli Didani?

20 A. Yes.

21 Q. Can you talk me through how it is that on a day-to-day
22 basis you would end up going to encounter a passenger?

23 A. Yes. So when we walk in there's a board that has lookouts
24 that we have to sign up, or we're given the assignment by our
25 supervisor. At that time I was not in a supervisor role. I

1 was just a regular officer. So I was assigned Mr. Didani's
2 lookout for the day, in which I then go and look at what the
3 record actually states and find out what the agent is actually
4 looking for. I don't recall exactly what it said, but in
5 layman's terms I believe it was related to an ongoing
6 investigation.

7 Q. Do you know if it was related to a specific type of ongoing
8 investigation or --

9 A. It was a drug-related, ongoing investigation.

10 Q. Now, so you look at the board. You figure out that Mr.
11 Didani is one of the individuals that you are going to be
12 encountering or attempting to encounter at the plane?

13 A. Right. And then what we do is we actually meet the plane,
14 plane side before they even open the doors for all the
15 passengers to come out.

16 Q. And did you do that in this case?

17 A. Yes.

18 Q. Prior to this date, August 6 of '16, can you estimate for
19 Judge Hood how many times you've escorted a passenger from the
20 plane back to an inspection area?

21 A. Hundreds.

22 Q. And can you estimate how many times you've conducted a
23 border inspection or border search of any devices prior to this
24 date?

25 A. I've done hundreds.

1 Q. All right. Do you recall this specific individual, Mr.
2 Didani? Do you recall the interaction generally?

3 A. I do not.

4 Q. All right. Did you draft a report in this case or some
5 type of -- did you document your activities here?

6 A. Yes.

7 Q. Have you had an opportunity to review that report?

8 A. I have.

9 Q. All right. Now, generally when you're going to get an
10 individual from a plane you said you go right up to the plane
11 and you wait?

12 A. Correct.

13 Q. What happens once the individuals are debarking from the
14 plane?

15 A. So when we have a lookout we have to positively ID the
16 lookout. Anybody coming off the plane we have to check their
17 passports upon them stepping off the plane and walking down.
18 So before they even are able to walk down to the hall to get
19 processed we check their passports and visually look for
20 face -- we have to check their passports and make sure that is
21 the correct person. And that's our technique to positively ID
22 the lookout.

23 Q. You've continuously said "we." Do you ever go alone to the
24 gate to escort a subject?

25 A. During any lookout we always have two officers, at least

1 two officers.

2 Q. And based on your review of the documentation you wrote in
3 this case do you know if you had another individual with you?

4 A. I did.

5 Q. And do you know who that individual was?

6 A. Yes. It was Officer Leeker.

7 Q. Okay. So you and Officer Leeker go to the gate. You are
8 checking the passengers as they exit the plane?

9 A. Correct.

10 Q. And you located -- did you locate Mr. Didani?

11 A. Yes.

12 Q. What happens at that point?

13 A. At that point we then take the passport. We also take the
14 cellular device that is on the person, and then we put it in
15 airplane mode. And we explain to the individual you're going
16 to follow us and then we'll inspect you when we get down there.

17 Q. Okay. In this case, do you know how many phones, if any,
18 you took from Mr. Didani?

19 A. From my recollection, I believe he had one cell phone on
20 him.

21 Q. All right. And you took that phone?

22 A. Yes.

23 Q. And you said that normally you would put it into airplane
24 mode?

25 A. Always.

1 Q. Why would you do that?

2 A. Because that's our policy.

3 Q. But do you know why there's a policy to put it in airplane
4 mode?

5 A. Yes.

6 Q. Why is that?

7 A. Due to giving that individual the opportunity to delete
8 anything or to have somebody else delete it via cloud.

9 Q. Okay. So is it fair to say that once you -- based on your
10 understanding, once you put a phone into airplane mode the
11 phone is prevented then from contacting other networks?

12 A. Correct.

13 Q. Okay. Incidentally, do you know where Mr. Didani was
14 arriving from on this particular day?

15 A. Based off of my report, it was Rome.

16 Q. Rome, Italy?

17 A. Yes, sir.

18 Q. All right. So you locate Mr. Didani, you take his
19 passport?

20 A. Yes.

21 Q. And you take you believe to be one phone?

22 A. I believe it was one phone, yes, sir.

23 Q. Do you remember what type of phone it was?

24 A. In my report, I believe it was an Apple.

25 Q. Apple iPhone?

1 A. Yes, sir.

2 Q. And that would have been either on the person of Mr. Didani
3 or in his carryon luggage?

4 A. Yeah. We ask if he has a cellular device on his person or
5 with his carryon bag. We always do that, and then we ask that
6 he provides it to us, or gives it to us.

7 Q. So once you did that do you, Officer Leeker and Mr. Didani
8 walk somewhere else?

9 A. Yes.

10 Q. Where do you walk to?

11 A. We walk down to the primary processing area.

12 Q. Is that also commonly called primary inspection?

13 A. Yes.

14 Q. How long would you say it took to get from the gate where
15 you originally located Mr. Didani down to primary inspection?

16 A. I don't recall what gate it was at, but in any regards it
17 would be 10 to 15 minutes within any part of the airport.

18 Q. And Mr. Didani is not handcuffed at this time; correct?

19 A. No.

20 Q. He's just walking with you?

21 A. Correct.

22 Q. All right. Can you just tell us generally what happens at
23 primary inspection?

24 A. Yes. During primary inspection the individual that's
25 present is positively ID'd with the passport in which I provide

1 to the officer. At no time does that passenger have the
2 passport. He then swipes the passport, which is basically it
3 reads off of our records and our databases to see if there's
4 any lookouts, NCIC records, past arrest history or anything
5 like that. Once his immigration status is verified and once
6 it's found that he has a lookout or he does not have a lookout
7 then he is released from primary inspections.

8 Q. Okay. So the Defendant -- excuse me -- Mr. Didani would
9 have given the -- his passport to the primary inspection
10 officer, or you would have since you had it; correct?

11 A. Correct.

12 Q. The primary officer scans the document, then returns it
13 back to you; correct?

14 A. Yes.

15 Q. And then what happens after that point?

16 A. Once that is completed we then go and get the passenger's
17 baggage, checked baggage.

18 Q. All right. Before we get there, just as a general matter,
19 does every single person who is flying internationally into
20 Chicago O'Hare or, for that matter, based on your training and
21 experience any international airport, have to go to primary
22 inspection?

23 A. Yes.

24 Q. And what's the purpose of that?

25 A. Check their immigration status.

1 Q. And to ensure that they are lawfully permitted to enter the
2 United States?

3 A. Correct.

4 Q. Now, you said that after dealing with the primary
5 inspection officer you went to go get Mr. Didani's baggage?

6 A. Correct. That's the next process.

7 Q. And that's his checked baggage?

8 A. Yes.

9 Q. And so how long would it have taken for you to get from the
10 primary inspection point to the baggage area?

11 A. Less than two minutes. It's right next to the primary
12 processing booths.

13 Q. And when you go get Mr. Didani's luggage are you -- is it
14 just you and Mr. Didani or did you also have another individual
15 with you?

16 A. No. Like I said, there's always two officers present
17 during any inspection.

18 Q. Okay.

19 A. I believe it would be me and Mr. Leeker.

20 Q. All right. What happens when you go to baggage claim?

21 A. Once we collect all of the passenger's baggage, we then
22 verify that that's his baggage. And then we escort them back
23 to the secondary processing area, which is secondary
24 inspections.

25 Q. All right. So you and Mr. Didani would be like any other

1 person waiting for their luggage that goes around the carousel;
2 right?

3 A. Correct.

4 Q. And then you go to secondary inspection?

5 A. Correct.

6 Q. What is secondary inspection?

7 A. Secondary inspection is a separate area where we check
8 everything that is on the passenger's person, the passenger's
9 checked luggage and the passenger's carryon luggage. This is
10 also where we get a binding declaration of anything that
11 passenger is bringing into the country that he did not leave
12 with.

13 Q. All right. We'll get to that -- back to that declaration
14 in a second, but with respect to the area we're talking about,
15 you have -- can you just generally describe in Chicago O'Hare
16 where primary inspection is and how that is in relation to
17 secondary inspection?

18 A. Absolutely. So the whole federal inspection security area
19 I would say is about 100 yards by 75 yards. It's not a big
20 area. You have carousels that -- we have nine carousels that
21 baggage comes down, we have 62 primary booths, and then we have
22 four secondary baggage inspection areas where we would be
23 processing the passengers.

24 Q. And so how far would those four secondary inspection booths
25 be from primary?

1 A. Less than five -- less than three minutes.

2 Q. Okay. Now, you had said that at secondary one of the
3 things you do is you have a second binding declaration?

4 A. Correct.

5 Q. Where was the first?

6 A. So also during primary -- I'm sorry -- primary inspections
7 they also get a binding declaration there. I forgot to state
8 that earlier.

9 Q. And the purpose of the declaration, you correct me if I'm
10 wrong, but it gives the individual coming into the United
11 States an opportunity to declare what property, merchandise,
12 whatever they may have with them?

13 A. Correct.

14 Q. Do you know if Mr. Didani made a declaration at primary in
15 this case?

16 A. Everybody makes a declaration at primary.

17 Q. Do you know whether Mr. Didani declared anything at primary
18 inspection based on your report?

19 A. I do not remember.

20 Q. Do you know during secondary whether or not Mr. Didani made
21 a declaration?

22 A. Yes.

23 Q. And what did he declare?

24 A. He declared HGH.

25 Q. HGH. That's human growth hormone?

1 A. Correct.

2 Q. And when I say "declare" that doesn't mean that somehow now
3 it's lawful to bring in HGH, does it?

4 A. Absolutely not.

5 Q. Okay. What's the purpose of a declaration then for
6 criminal purposes?

7 A. Basically if you -- so Customs checks a lot of different
8 things besides drugs. So when you make a positive declaration
9 on commerce you're taxed appropriately to what you declared.
10 There's extra penalties if you do not declare that.

11 Mr. Didani declared HGH. It is a FDA-controlled
12 substance. Either way, it's illegal. If he made a declaration
13 or not, it would have been seized and it's still unlawful to
14 bring through international borders.

15 Q. Okay. So a declaration just simply could lessen the
16 penalties, Custom penalties?

17 A. Correct.

18 Q. Based on your training and experience, it has nothing to do
19 with whether or not someone could be charged, arrested for
20 smuggling drugs into the United States; correct?

21 A. Yes.

22 Q. Was the secondary -- excuse me -- the second declaration
23 done before or after Mr. Didani's bags were searched?

24 A. We always do a binding declaration before we search the
25 person or his luggage.

1 Q. And did you, in fact, search Mr. Didani's luggage in this
2 case?

3 A. We did.

4 Q. And do you know whether you searched his checked luggage or
5 his carryon or both?

6 A. We checked both.

7 Q. And did you find any phones in any of the luggage to your
8 memory?

9 A. To the best of my knowledge, we did find another phone. It
10 is written in my report. It was a BlackBerry cellular device.

11 Q. What else, if anything, did you find inside Mr. Didani's
12 luggage?

13 A. We found vials of HGH.

14 Q. Do you know how many vials?

15 A. The best of my -- from my memory, I believe it was seven
16 vials.

17 Q. Based on your training and experience, do you know if it's
18 unlawful to bring HGH into the United States?

19 A. Yes, it is.

20 Q. Did you seize those vials?

21 A. I did.

22 Q. On the basis of seizing those vials, did you pat the
23 Defendant down?

24 A. Yes.

25 Q. And in secondary after finding these vials of HGH did you

1 have occasion to interview the Defendant, if you remember --
2 excuse me, Mr. Didani, if you remember?

3 A. Yes.

4 Q. And were you alone during this interview or was someone
5 else present?

6 A. There's always somebody present during the inspection.

7 Q. Do you know who that would have been?

8 A. That would have been Officer Leeker.

9 Q. Do you know how long the interview was?

10 A. I do not.

11 Q. As you sit here today, do you recall the details of that
12 interview?

13 A. I do not.

14 Q. Is there anything that would refresh your memory as to the
15 details of that interview?

16 A. The report that I wrote the day of.

17 Q. Did you detail what the Defendant told you in that report?

18 A. Yes.

19 Q. Excuse me. I keep saying the "Defendant." I apologize.
20 Mr. Didani during the interview?

21 A. Yes.

22 Q. Who prepared the report, just you or someone else?

23 A. Because I was the primary inspecting officer, I would have
24 wrote it.

25 Q. Okay. And does the report accurately reflect your

1 knowledge of the interview?

2 A. Yes.

3 Q. Was your report drafted when the interview was fresh in
4 your memory?

5 A. Yes.

6 MR. McDONALD: Let the record reflect I'm showing
7 counsel for the Defendant your report.

8 Let the record reflect that I'm marking Officer
9 Parisi's report as Government Exhibit number 10.

10 May I approach the witness?

11 THE COURT: Number what?

12 MR. McDONALD: 10.

13 THE COURT: Okay. Yes, you may.

14 MR. McDONALD: Thank you.

15 BY MR. McDONALD:

16 Q. Officer Parisi, take a look at that report. Read it
17 silently to yourself and let me know when you're done.

18 A. Okay. I'm done.

19 THE COURT: Very well. What was the question?

20 You, gentlemen, if you could just keep it down a
21 little bit.

22 MR. FINK: My apologies. That's my fault, Judge.

23 THE COURT: Okay. Just a little bit, all right.

24 MR. FINK: You've got it.

25

1 BY MR. McDONALD:

2 Q. Now, without relying on your report at all, are you able to
3 remember in detail what the Defendant told you during the
4 interview?

5 A. No.

6 MR. McDONALD: Judge, at this time I'd ask the witness
7 under FRE 803(5), which is recorded recollection, that the
8 witness be permitted to read that portion of the interview of
9 Mr. Didani on August 6, 2016 allowed into the record.

10 THE COURT: Any objection?

11 MR. FINK: I don't know that the foundation of whether
12 he can't recall well enough has been established when we have
13 just gone through detail by detail, including his ability to
14 remember putting a phone in airplane mode, where he walked,
15 what the situation was, and suddenly can't remember any detail.
16 So I object on a lack of foundation that his memory truly is --

17 THE COURT: Okay. Lay a better foundation.

18 MR. McDONALD: Judge, he's testified that he did
19 interview him, but didn't remember the details. He was given
20 an opportunity to refresh his recollection by reading the
21 report silently. He read the report silently, and he has still
22 indicated without relying on the report that he cannot recall
23 the details of the interview. I don't know what additional
24 foundation would be necessary.

25 THE COURT: So your position is he doesn't remember

1 anything about it?

2 MR. McDONALD: My position is that this is a recorded
3 recollection under FRE 803 that is a record that, one, is on a
4 matter the witness once knew about, but now cannot recall well
5 enough to testify fully and accurately. Two, was made by the
6 witness when the matter was fresh in his memory. And, three,
7 accurately reflects the witness' knowledge, which is everything
8 that he testified leading up to me showing him the report.

9 THE COURT: Okay. And you think you're satisfied that
10 he doesn't remember anything? Because your question was do you
11 remember any of the details.

12 MR. McDONALD: My question was to him without relying
13 on his report does he remember in detail what Mr. Didani told
14 him during the interview, and he said no.

15 THE COURT: Okay. I'll let him do that, but first ask
16 him a few questions about what he remembers not in detail.

17 BY MR. McDONALD:

18 Q. Officer Parisi, after reviewing your own report, do you
19 remember anything specifically about that interview?

20 A. To be exact and accurate as possible, no, I do not.

21 THE COURT: Okay. But it's the same question.
22 "Specific" is the same as in detail to me.

23 Your objection is overruled. I am going to allow it,
24 but I think you could have laid a better foundation.

25 MR. McDONALD: I apologize.

1 THE COURT: Go ahead. You can read it.

2 THE WITNESS: "Subject Didani, date of birth 10-25,
3 1977, Albanian passport."

4 THE COURT: No, but that's the whole report.

5 MR. McDONALD: Yeah. Just please -- if I may, your
6 Honor.

7 THE COURT: Why don't you indicate to him what you
8 want him to read. You may step forward and do that.

9 MR. McDONALD: Thank you.

10 BY MR. McDONALD:

11 Q. Officer Parisi, I'm just interested in the interview
12 portion of Mr. Didani's report to you. So wherever you see
13 initially that Mr. Didani stated something you can begin from
14 there. I believe it's probably the third line.

15 A. Okay. "Subject stated that he is en route to the
16 Intercontinental Presidential Hotel in Mexico City, Mexico at
17 address, Campos Eliseos 218, Miguel Hidalgo, Col. Chapultepec
18 Polanco, 11560 Ciudad de Mexico, D.F. Subject has a
19 reservation for two days to attend a wedding for Didani's
20 friend named Puzio, Erick at the hotel. Didani stated that
21 Puzio lives in Detroit where they became friends eight to ten
22 years ago. Didani stated that he owns a home at address
23 15843 Sabre Line, Fraser, Michigan 48026 in which is vacant
24 when he travels and lives in Albania. The subject also
25 stated that he currently owns and operates a trucking

1 business in the Michigan area named Michigan Freight in which
2 he has operated for seven years. Adriatik Sheko is his
3 business partner for this company and operates it when Didani
4 is out of the country. Subject stated that he used to
5 operate a second trucking company named ANL Michigan
6 Transportation, which is no longer in business. Didani
7 stated that he also owns and operates a mineral company in
8 Tirana, Albania named US Mineral where he sells chrome and
9 coal. The subject could not give me an exact address, nor a
10 business card. Subject's home address in Albania is RR.Naim
11 Frasheri Shkalla F.85, Tirana, Albania 1001. Didani has
12 multiple trips to Turkey during 2015. Subject stated" --

13 MR. FINK: Your Honor, we've got to focus on what was
14 stated in the statement as opposed to the other parts of the
15 report.

16 MR. McDONALD: I'm not sure that that's not what
17 Didani --

18 THE COURT: Well then maybe you should pose a question
19 and see if it is.

20 BY MR. McDONALD:

21 Q. With respect -- based on your knowledge, with respect to
22 the statement "Didani has multiple trips to Turkey during
23 2015," do you recall if that's a part of the interview, or
24 rather that was some information added by CBP in this report?

25 A. I don't recall.

1 Q. All right. Well, forget that sentence then and move to the
2 next sentence that says "Subject stated," please.

3 A. All right. "Subject stated that business in Turkey were
4 his biggest customer. Subject could not recall any names
5 of the business, nor provide any evidence of doing business
6 with anyone in Turkey. Subject stated that when he travels
7 to Turkey he stayed at Elite Hotel near the airport. Subject
8 would not stay more than a week and could not provide any
9 address or business he had visited. Subject stated he did
10 not have any of his records with him. This was why he could
11 not provide the information. The last time Didani was inside
12 Turkey was July of 2015" -

13 MR. FINK: Objection again to the same. Whether this
14 is part of the statement or his research, I don't know.

15 THE COURT: Counsel?

16 BY MR. McDONALD:

17 Q. The last sentence that you began to read -- we'll move on.

18 Is there any other statements in this report that
19 talks about Didani making a statement, in the narrative
20 portion?

21 A. No.

22 MR. McDONALD: All right. May I approach the witness
23 and grab the report?

24 THE COURT: You may.

25

1 BY MR. McDONALD:

2 Q. Now, Officer Parisi, you said that you initially seized an
3 iPhone, a Apple iPhone, from Mr. Didani at the gate. And then
4 you thought that you had found a BlackBerry in his luggage; is
5 that accurate?

6 A. We detained. We did not seize.

7 Q. Okay.

8 A. And, yes, that is correct.

9 Q. You were the one that detained those phones?

10 A. Yes.

11 Q. And do you know what happened with the phones that day?

12 A. Yes. Because of our agreement with HSI, any time we find
13 an illegal substance we have to make notification to HSI. HSI
14 responded. The phones were then transferred over to HSI.

15 Q. Do you know who from HSI responded?

16 A. Yes.

17 Q. Who was that?

18 A. Agent Nugent.

19 Q. When you detain a cellular phone during the course of a
20 border search -- and, by the way, would you agree that your
21 detention of those two phones during the bag exam and at the
22 time that you met Mr. Didani at the gate would be characterized
23 as a border search?

24 A. Absolutely.

25 Q. When you detain a phone during a border search, are you

1 required to fill out a form?

2 A. No -- I'm sorry, yes. I apologize. Yes, we are.

3 Q. What type of form are you required to fill out?

4 A. 6051D.

5 Q. Did you fill out a 6051D in this case?

6 A. I did.

7 MR. McDONALD: May I approach the witness?

8 THE COURT: Yes.

9 MR. McDONALD: For the record, this has already been
10 marked.

11 BY MR. McDONALD:

12 Q. I'm showing you what's been marked as Exhibit number 6. Do
13 you recognize what that is?

14 A. I do.

15 Q. Can you identify it for the record?

16 A. I'm sorry?

17 Q. Can you identify it for the record?

18 A. Yes. This is a 6051D for two detained cellular devices.

19 Q. Is that the form that you filled out on August 6, 2016 after
20 detaining Mr. Didani's iPhone and BlackBerry?

21 A. Yes.

22 Q. Incidentally, do you know whether or not Mr. Didani's
23 BlackBerry turned on?

24 A. In my report, there was an issue with the BlackBerry
25 device, and it would not turn on at that time.

1 Q. Do you see your signature anywhere on Exhibit 6?

2 A. Yes.

3 Q. And can you identify where it is and if there's a date next
4 to it?

5 A. Yes. It's on item line 20, the detaining officer. It is
6 my printed name, my signature, and the date is 8-6, 2016.

7 Q. Was this form filled out at or near the time you detained
8 Didani's phones?

9 A. Yes.

10 Q. Is this a form that is kept in the ordinary course of your
11 occupation?

12 A. Yes.

13 Q. Was it the regular practice of CBP to fill out these forms
14 when electronic devices are detained?

15 A. Yes.

16 MR. McDONALD: Move for admission of 6.

17 THE COURT: Any objection?

18 MR. FINK: No objection.

19 THE COURT: Six is admitted.

20 MR. McDONALD: Thank you. May I retrieve the exhibit?

21 THE COURT: You may.

22 BY MR. McDONALD:

23 Q. Now, with respect to this form, after you fill it out do
24 you give Mr. Didani a copy of this form?

25 A. Yes.

1 Q. And do you know if Mr. Didani was ultimately allowed to
2 leave?

3 A. Yes.

4 Q. All right. Now, you've been a law enforcement officer for
5 how many years?

6 A. 11 years.

7 Q. And you've done countless border searches; is that fair?

8 A. Yes.

9 Q. And countless baggage inspections?

10 A. Yes.

11 Q. And you've been trained on border search and border search
12 authority?

13 A. Yes.

14 Q. Based on your training and experience, given that Mr.
15 Didani brought HGH into the United States, any information you
16 knew from TECS about this underlying investigation, was it your
17 belief there it was reasonable suspicion to conduct a further
18 border search of this phone?

19 A. Yes.

20 MR. McDONALD: May I have one moment?

21 THE COURT: Yes.

22 (Briefly off the record.)

23 MR. McDONALD: No other questions. Thank you.

24 THE COURT: You may cross-examine.

25 MR. FINK: Thank you, Judge.

1 Officer Parisi, good afternoon. My name is Wade Fink.

2 I represent the Defendant, Ylli Didani. It's nice to meet you.

3 CROSS-EXAMINATION

4 BY MR. FINK:

5 Q. Officer, currently where are you stationed?

6 A. In Chicago O'Hare International Airport.

7 Q. So you live in the Chicago area, out of state? Do you live
8 out of state?

9 A. Yeah, I live out of state.

10 Q. You traveled in for today's hearing?

11 A. Correct.

12 Q. You visited anywhere in Detroit besides the courthouse?

13 A. I'm sorry?

14 Q. Have you visited anywhere in Detroit besides the
15 courthouse?

16 A. Yes. When I came in last night, yes, I did.

17 Q. I'm not asking you specific, but generally can you tell me
18 the addresses of the places that you visited in Detroit?

19 A. I cannot tell you the addresses.

20 MR. McDONALD: Objection, relevance.

21 THE COURT: How is it relevant?

22 MR. FINK: Just the reasonableness and someone not
23 being able to recall every address that they visited.

24 MR. McDONALD: The fact that this witness would travel
25 to other --

1 MR. FINK: I just want to know if he recalled
2 something from yesterday, whether -- the questions and the
3 statement that were read about my client not remembering
4 specifics.

5 THE COURT: Okay. Go ahead. Overrule your objection.
6 Go ahead.

7 BY MR. FINK:

8 Q. Do you remember any of the addresses that you visited
9 yesterday?

10 A. No, I do not.

11 Q. Do you know the address of this courthouse? You just
12 generally know that you're in Detroit, right, and went to some
13 places; right?

14 A. I know I'm in the Federal Courthouse, yes, in Detroit.

15 Q. Thank you, Officer.

16 Officer, at the beginning, and please correct me if
17 I'm wrong, at the beginning of your testimony on direct exam
18 you answered a question that you don't really recall the
19 interaction with Mr. Didani. Do you remember that?

20 A. Correct.

21 Q. And you said you reviewed a document or documents to I
22 guess refresh your recollection; is that accurate?

23 A. Yes.

24 Q. What exactly did you review prior to this to then testify
25 about the entire encounter?

1 A. I reviewed that report.

2 Q. So the only thing that you reviewed to refresh your
3 recollection was this incident report that was admitted as
4 Exhibit 6?

5 A. Yes.

6 MR. McDONALD: Objection. That was not admitted as
7 Exhibit 6. Exhibit 6 was the 6051D.

8 MR. FINK: My apologies. Was that report admitted?

9 MR. McDONALD: It was not admitted.

10 BY MR. FINK:

11 Q. Okay. The report that was not admitted, but you were
12 discussing and you read from, is that the only report that you
13 reviewed to refresh your recollection?

14 A. Yes. That report and the 6051D, yes.

15 Q. Okay. So your testimony and the specifics you gave after
16 you explained to the court that you really didn't have specific
17 memory, that's all based on your review of this report?

18 A. Correct.

19 Q. Okay. Did you make certain guesses about what happened or
20 did you do it all from memory?

21 A. No. After countless -- after doing my job for a long time,
22 I've become very accustomed with a routine.

23 Q. Sure.

24 A. And that routine has not differed from my inspection.
25 That's my recollection.

1 Q. So let me ask it this way instead of going point by point.
2 If you testified to something that isn't specifically in that
3 report, your testimony is just based on your general practices;
4 correct? I can give you a specific example if that helps.

5 A. It's based upon procedures and, you know, our regulations
6 and -- yes.

7 Q. For example. For example, you stated that when you
8 encountered Mr. Didani you placed the phone into airplane mode.
9 Do you recall testifying to that?

10 A. Yes.

11 Q. Is that in your incident report?

12 A. No, it's not, but it's in our policy.

13 Q. Okay. But that's my question. Obviously your testimony in
14 my view in multiple ways was somewhat different from the
15 report, but I'm asking you if it was that's based on just your
16 general procedure, not necessarily a specific memory as to Mr.
17 Didani; is that accurate?

18 A. Yes.

19 Q. Okay. Thank you, Officer. Do you know when, for example
20 -- let me go back to that airplane policy. Do you know when
21 the airplane mode policy was adopted by CBP?

22 A. I don't know, but it is a area located for all Chicago AOR.
23 That is a rule and that's a policy that we have to abide by.

24 Q. Did you know that that policy was adopted in 2018?

25 A. It was a area-specific policy for Chicago.

1 Q. So it's your testimony that the CBP had a policy in Chicago
2 to place phones in airplane mode in 2016?

3 A. Yes.

4 Q. Was it a written policy?

5 A. Ever since I was in CBP, that was the policy. Even when I
6 was in the secondary enforcement unit when I first came to
7 Chicago, at any time that you inspected a cellular device you
8 needed to put that in airplane mode.

9 Q. And that could have been just a policy amongst your
10 specific department if it wasn't written? That's just
11 something you understood to be the rule?

12 A. That's how I was taught, and that's what I was told that
13 that is policy and that's how I was trained.

14 Q. Understood. Thank you, Officer. Can you explain to me,
15 and for the benefit of the court, the interplay between other
16 governmental law enforcement agencies and CBP? Specifically
17 what I'm referring to in that interplay is when they ask CBP to
18 assist in these border searches, interviews, what have you, is
19 that something that you deal with often in your job, requests
20 from other agencies?

21 A. Every single day.

22 Q. Every day, okay. Specifically do you get those requests
23 from Homeland Security Investigations often?

24 A. We get them from every federal agency, yes.

25 Q. So there's often cooperation amongst agencies to do these

1 things; correct?

2 A. Correct, yes.

3 Q. And oftentimes these other agencies, HSI is the example I'm
4 giving, but that could be other agencies, are relying on you,
5 Customs and Border Protection, to actually carry out the
6 interview, the detention, whatever they're asking you to do?
7 They're often relying on you; right?

8 A. Yes. HSI has the same exact authority as CPB does. They
9 have every border search authority that is in law.

10 Q. No, I understand that. I'm just asking sometimes they have
11 to rely on you to do the actual interview or whatever they're
12 requesting, they have to have CBP actually do it. Perhaps
13 someone's not on-site, perhaps they can't get there in time. I
14 mean, is that an accurate statement that sometimes they'll just
15 ask CBP to do it?

16 A. That is an accurate statement, because we work hand in hand
17 together.

18 Q. Sure. And then if HSI is on-site you can either do it
19 together, maybe HSI will do it themselves, but, you know, it
20 varies; right?

21 A. But because Customs is at that airport that's kind of our
22 house. So we expect a courtesy to either let us know, and
23 we'll do the inspection. Like I said, we have to follow proper
24 procedure and policy in which we'll transfer off to another
25 government agency such as HSI, DEA and such, but ultimately

1 that's our house. So they need to come to us first and then
2 we'll decide on our course of action.

3 Q. That's helpful information. I appreciate that, Officer.
4 So essentially in the interplay between the governmental
5 agencies CBP in your experience, and I know that could be
6 different, but at O'Hare and in your experience there's an
7 expectation that other law enforcement agencies will give you
8 the courtesy of involvement, because that, as you said, is your
9 house?

10 A. Yes.

11 Q. And you would expect, and correct me if I'm wrong, you
12 would expect that these other agencies would be mindful of your
13 policies and procedures and how CBP handles things; right?

14 A. Yes.

15 Q. Okay. I want to ask --

16 Do you have a copy of your report, Officer, still?

17 A. I do not.

18 MR. FINK: Judge, can I approach?

19 THE COURT: Yes, you may.

20 MR. FINK: Thanks. Would you like a copy, your Honor?

21 THE COURT: No, I'm fine.

22 MR. FINK: There you are.

23 THE WITNESS: Thank you.

24 THE COURT: The government is going to give --

25 Did we admit that?

1 MR. McDONALD: It was not admitted, your Honor.

2 MR. FINK: I'm just going to ask him if he remembers
3 first.

4 THE COURT: Okay. That's okay. I just want to say I
5 knew we admitted something.

6 BY MR. FINK:

7 Q. Officer, do you recall -- and certainly you've seen a lot
8 more of these reports than me, but on a certain portion, I'm
9 referring to Page 3 of your report here at the bottom under
10 "TECS Information," do you recall making a notation in there
11 that "the subject declared seven vials of Kigtropin and the
12 substance was seized," and the second part of that, "If
13 encountered, hundred bag exam is recommended." Do you recall
14 that, and if not could you look at Page 3 for me?

15 A. I'm looking at it.

16 Q. Does that refresh your recollection looking at what I just
17 read?

18 A. Yes.

19 Q. So in this report there's two sentences there. "On 8-6,
20 2016 subject declared seven vials" -- I'm going to call it
21 HGH -- "Kigtropin. The substance was seized." And then it
22 says, "If encountered, hundred percent bag exam is
23 recommended"; right?

24 A. Yeah. Yes, sir.

25 Q. The second part of that sentence is hypothetical suggesting

1 that after the fact if something is encountered to do a bag
2 exam; right?

3 A. Yes.

4 Q. So does that -- to you it seems -- at least it seems to me,
5 but correct me if I'm wrong, that there was a declaration made
6 even before the bag exam was done that HGH was in my bags;
7 correct?

8 A. Correct.

9 Q. So there was a declaration made by Didani before he even
10 knew you were searching or had his bags; right?

11 A. Correct.

12 Q. Otherwise, you wouldn't have written "if encountered
13 hundred bag exam requested"; right?

14 So does that mean he put it on a declaration form on
15 the airplane perhaps?

16 A. I don't recall.

17 Q. Is that possible?

18 A. It could be possible.

19 Q. Is it possible that he told primary that he has it?

20 A. It could be possible.

21 Q. I'm just try to figure out what are the possibilities as to
22 when this was declared, if it was done before the bag exam,
23 that's all.

24 A. It could have been declared at primary and it could have
25 been on his declaration.

1 Q. Certainly based on that, Officer, in your experience it
2 certainly doesn't seem like he was trying to hide what he had;
3 correct?

4 A. Well, he did, yes. He declared it, correct.

5 Q. Do you know if Kigtropin -- this is if you know, do you
6 know if it's legal in Albania?

7 A. I do not know.

8 Q. Do you know if it's legal anywhere in Europe?

9 A. I do not know.

10 Q. Did you find out or did you ask anyone?

11 A. I didn't. It's a FDA-controlled substance, and it's not
12 legal in the United States.

13 Q. Of course. I don't dispute that. I'm just asking if you
14 have any concept of where it was coming from being --

15 A. Yeah. I don't know any other countries and the legality of
16 the HGH.

17 Q. How much is 3.7 milliliters in liquid form? Can you give
18 us a frame or reference?

19 A. So a vial is about this big dependent --

20 Q. Like a nail polish?

21 A. Yeah, it's -- nail polish, it's taller than that. But on
22 each vial if will the volume how much liquid is inside.

23 Q. How many vials did you discover?

24 A. From my report, it said seven.

25 Q. They must not have been full; right? If you had seven

1 vials, it's 3.7 milliliters. It seems like a small amount.

2 But correct me if I'm wrong. You have the experience. Do you
3 remember?

4 A. I don't recall.

5 Q. Okay. Is 3.7 milliliters a lot of liquid in your
6 experience?

7 A. When it comes to HGH and steroids, yes, that's a dosage.

8 Q. Okay. That's a dosage. What does that mean?

9 A. Depending on how much HGH and steroids you're using --

10 Q. Sure.

11 A. -- you would inject it into a needle, or put it in a needle
12 in a syringe.

13 Q. So it's like a single dose?

14 A. I don't know if it's a single dose or not. It all depends
15 on that individual how much they're taking.

16 Q. Understood. I just want to go back in order, and I know
17 some of this might be repetitive so forgive me. The initial
18 encounter with Mr. Didani was as he was exiting the airplane;
19 correct? You were describing the process of checking
20 passports. Do you recall that?

21 A. Yes.

22 Q. Okay. And once you did identify him with your partner,
23 which you said it was Leeker; correct?

24 A. Correct.

25 Q. Once you identified Didani that's initially when you took

1 the iPhone, detained the iPhone; correct?

2 A. Correct.

3 Q. Now, did you ask him for his phone or how did -- how did it
4 come to pass that you came into possession? Did you ask, did
5 you take? How did that go down, if you recall?

6 A. So during the specific encounter, I cannot tell you what I
7 said.

8 Q. What's your general practice?

9 A. My general practice is I ask for an individual's electronic
10 devices, if they have any and how many they have. I will then
11 take possession of that, or let them put it in airplane mode,
12 but I would hold the electronic device until we got back to
13 baggage secondary.

14 Q. Have you had anyone ever refuse to do that?

15 A. No.

16 Q. Have you had anyone deny they had a cell phone?

17 A. I have never -- I'm sorry. Repeat that, please.

18 Q. Say to you "I don't have a cell phone," something of that
19 nature?

20 A. Yeah, I've heard that.

21 Q. And what happens when someone denies it? Do you inquire
22 further?

23 A. Well, I inquire, but I have yet to find a cell phone on
24 somebody who said they don't have one.

25 Q. Okay. Understood. The -- initially you took -- the point

1 of taking his cell phone, I know this may not be your
2 recollection, but if you recall was there any other
3 conversation at that point with Mr. Didani?

4 A. I don't recall.

5 Q. Did you have possession of his passport at the time as well
6 at this initial encounter?

7 A. Yes. I would have possession when I encounter him at the
8 airplane upon me ID'g him.

9 Q. So you have possession of his passport, possession of his
10 iPhone, and you've now asked -- and I know this might be based
11 on general practice if you don't recall specifically Mr.
12 Didani, but you have asked him to come with you to inspection;
13 correct?

14 A. Correct.

15 Q. Okay. He's not handcuffed. You made a point of saying
16 that; right?

17 A. Yes.

18 Q. But you do have two pieces of his property; right?

19 A. Correct.

20 Q. And you have asked him to come with you; correct?

21 A. Correct.

22 Q. Okay. First stop you make is primary inspection; right?

23 A. Yes.

24 Q. And for those of us who aren't experts, but have travelled
25 internationally, primary inspection is the booth, for lack of a

1 better term, with an agent at it?

2 A. Yes, correct. That's where everybody goes that comes off
3 the plane. That's exactly where they go to --

4 Q. That's where I go when I'm going to get my bags; right?

5 A. Yes.

6 Q. Okay. But Mr. Didani is different in some sense, because
7 he's with you and Leeker; correct?

8 A. He still has to go through the process. We're just
9 escorting him to make sure that he can't delete anything from
10 the cell phone, and then we could keep eyes on him and the
11 entire time until our inspection is completed.

12 Q. So do you wait in line with him? I mean, I don't know if
13 you remember in this instance, but if there were a line would
14 you wait in line with the individual?

15 A. We usually give them the VIP treatment and bring them right
16 in the front, yes.

17 Q. Maybe I'll ask you to detain me then so I can skip the
18 line.

19 Officer, so you said that part of the reason that you
20 do it is to make sure that there's no spoliation or deletion of
21 evidence, but also to keep an eye on them; correct?

22 A. Correct.

23 Q. If that person were not to come with you, do you have
24 policies and procedures of what you would do in that instance?

25 A. Yeah. We would actually -- we would take control of the

1 individual, probably handcuff them and then continue with our
2 -- continue on our way to primary operations, but --

3 Q. So saying that --

4 A. -- as of yet today I have never had anybody say no to me.

5 Q. I'm glad to hear that, but I'm asking that because on
6 direct examination Mr. McDonald and you made a point about not
7 being handcuffed just like any other person. But in reality,
8 Officer, if Mr. Didani refused your orders of any way he was
9 not free to just walk back to another airplane; correct? You
10 would have used force, if necessary?

11 A. Well, he's not free to go anyway. He has to be processed
12 and go through the proper inspection and primary and then go
13 through our -- go through the federal inspection security area
14 and then be released through Customs.

15 Q. Sure. But he's not --

16 A. But he's able to leave.

17 Q. He's not just not free to leave outside of Customs, he's
18 not free to leave your immediate presence either; correct?

19 A. Correct.

20 Q. Okay. And I know you said it hasn't happened, but should
21 it the policy and procedure is you could handcuff or use other
22 force to coerce compliance; right?

23 A. You could, yes.

24 Q. All right. On that note, let me ask you this, because I
25 know it might be different at different airports. But at

1 O'Hare do you get your checked baggage before going through
2 primary or after?

3 A. After primary.

4 Q. So you go through primary with whatever carryon you might
5 have; correct? You are temporarily admitted or whatever, you
6 pass primary or asked to go to secondary. Whatever the case,
7 you still have to get your checked bags first; right?

8 A. Correct.

9 Q. And, if it's with you, if you're escorting someone for one
10 reason or another, you go with them to pick up those bags;
11 right?

12 A. Correct.

13 Q. Okay. And you said it was like any other person at baggage
14 claims. Do you remember that?

15 A. Correct.

16 Q. Although, you have possession of his phone and passport;
17 right? So it's a little different than other people that have
18 just gone through primary; right?

19 A. He has free movement to do whatever he wants. He can go to
20 the washroom or anything like that. We just don't let him have
21 his cell phone and his passport until we have completed our
22 inspection.

23 Q. I appreciate that. I just -- precisely speaking, he's not
24 like every other person; right? He's being escorted by you and
25 you have couple pieces of his important property; right?

1 A. At this time he is just like every other person, because
2 he's getting his luggage like anybody else, free to move about
3 however he feels.

4 Q. Okay. After this, after we identify his bags, that's when
5 we go to the secondary room that you discussed; right?

6 A. Correct. And this is a private area. It's a little
7 separated from the public so there's no embarrassment or
8 anything like that. Yeah.

9 Q. Sure. Now, we had another agent describe this. The only
10 people really that are observing this are anyone else that's in
11 secondary; right?

12 A. Correct.

13 Q. Not the general public, just if anyone else is in that
14 room, but otherwise it's just you?

15 A. Yes.

16 Q. And the agents that are with you; correct?

17 Now, is that where the interview took place, or would
18 have taken place?

19 A. So because I was on the PERT team we actually had a
20 designated area. So it would have only been me and Leeker with
21 the subject at that time. Nobody else.

22 Q. Now, the interview was conducted, the one that you read
23 into the record; right? That was conducted by you and Leeker;
24 is that accurate?

25 A. Correct.

1 Q. Was there -- do you know a Special Agent Nugent?

2 A. I do.

3 Q. Okay. Was he present during the interview?

4 A. So I don't recall if he was present during the interview.

5 I know he was present after the initial find of the vials of

6 HGH.

7 Q. Okay. But you don't -- do you recall him asking any
8 questions?

9 A. I don't recall that, no.

10 Q. Okay. You do remember, though, specifically that you and
11 Officer Leeker did ask questions; right?

12 A. Correct, yes.

13 Q. All right. When you initially got the assignment from your
14 supervisor, you would have gotten it that morning; correct?

15 A. Correct.

16 Q. Okay. So you didn't know anything the night before; right?

17 A. No.

18 Q. You found out about it that morning?

19 A. Correct.

20 Q. And you said you did -- you got a little background
21 information. Do you recall that?

22 A. Yeah. I always go through the analytics before I do my
23 inspection of the lookout, yes.

24 Q. Sure. Can you describe for me generally what the analytics
25 will show you?

1 A. It will show me all his information. It's a TECS. I can
2 search them in our law enforcement databases. I can find out
3 his previous travel internationally, find out any lookouts that
4 have been placed on him, any previous baggage inspections, any
5 previous seizures or any other violations that he has had
6 previously.

7 Q. Are there any notations about what he may be investigated
8 for my HSI?

9 A. I believe it was a drug related -- drugs and weapons
10 investigation from -- after I looked at my notes.

11 Q. Is there -- in these kind of situations, either
12 specifically to Mr. Didani or just generally speaking, is there
13 anymore detail beyond that that you're able to look before you
14 go do your lookout for a particular person?

15 A. Can you --

16 Q. Like is there any details about what the evidence or the
17 investigation has shown so far, this person has been traveling
18 suspiciously, this person is linked to drug cartels, this
19 person is X, Y and Z? Can you get those kind of details in
20 these reports?

21 A. No.

22 Q. So typically you don't know much more beyond what the
23 general concern is, for lack of a better term?

24 A. Well, not everybody's under investigation. So obviously
25 there's something when I find a lookout that has currently

1 under investigation for drugs and guns. It's a little bit --
2 my awareness is heightened a little bit.

3 Q. Interesting. So would you -- do you know the difference
4 between a routine and a nonroutine border search?

5 A. A routine and a nonroutine?

6 Q. Yeah. Have you ever heard that term before at CBP?

7 A. No.

8 Q. You're not trained on the delineation between those two?

9 A. No.

10 Q. So you did -- well, let me ask you this then on the topic.
11 You did mention there are circumstances where you'll have a
12 lookout or a TECS assignment or a report that doesn't really
13 have any specific investigation tied to it; right?

14 A. Correct. Anybody who comes internationally is up for
15 inspection.

16 Q. It could just be Wade Fink traveled to the Middle East and
17 it's his turn to be searched? I mean, that's possible?

18 A. I'm sorry. Can you repeat the question?

19 Q. I'm Wade Fink when I say that. I'm saying it could just be
20 random person, me, Wade Fink, traveled to the Middle East this
21 week and it's his turn to be, you know, asked why?

22 A. Well, the unit I'm in at this particular time we don't do
23 random inspections. It is targeted inspections. That's all I
24 do.

25 Q. Okay. Your unit?

1 A. My unit that I was at during this time.

2 Q. But CBP also does lookouts and these things of this nature
3 for people that may not be targeted; correct? It might just be
4 random, or no?

5 A. There are random inspections. They're called COMPEXs, but
6 that's just a random thing where we will talk to somebody.

7 Q. I understand, okay. So I'm going to use routine in a
8 colloquial sense, not in a legal definition. But it would be
9 routine to randomly send someone to secondary that just, you
10 know, either pops up on the computer or is the sixth number out
11 of ten. There are random secondary searches; right?

12 A. There are random, yes.

13 Q. And that has a typical routine that goes with it. They go
14 to secondary, you search X, Y and Z, and then they're either
15 admitted or not admitted; right?

16 A. It's more of like an audit, yes.

17 Q. But when it comes to you there's specifics?

18 A. Correct.

19 Q. There's a reason that we're looking at this person;
20 correct?

21 A. Yes.

22 Q. And it may be a more intrusive investigation than the
23 ordinary person; right?

24 A. Yes, yes.

25 Q. It may be that we're going to ask a lot of questions here,

1 because we've got to get to the bottom of this, or it may be
2 that I'm going to want you to look very deeply into his or her
3 phone? There's certain things that may be different than a
4 random check; right?

5 A. I've had extensive training on questioning.

6 Q. Sure.

7 A. So my questioning is a little bit more thorough than a lot
8 of my peers, but because of my participation to Tactical
9 Terrorism Response Team I have a little bit of a heightened
10 questioning background.

11 Q. But that's what's desired, I would assume, when there's a
12 targeted search; right?

13 A. Absolutely.

14 Q. I mean, just searching random person it's not as intrusive
15 necessarily as a targeted person; right?

16 A. You would be surprised on what we find on regular COMPEX
17 inspections, though, yes.

18 Q. I'm sure. I wouldn't want to come to someone as thorough
19 as you, God forbid.

20 No, Officer. I appreciate the candor. I'm just
21 asking that when you have specific information usually there's
22 a reason -- you've told me there's a reason it comes to you,
23 that's a targeted person?

24 A. Correct, there's a reason.

25 Q. You very well might not know the answer to this, but maybe

1 you can tell me in your general experience why this might be.
2 On Page 3 of 6 of the report here under the information listed
3 about my client, Ylli Didani, it has a birthday that's not his
4 and an address that's not his. How does information get
5 entered into the system? Is that something that you do or is
6 that already there?

7 A. You said on Page 3 of 6?

8 Q. Correct, 3 of 6, which has got the Bates label on the
9 bottom right of 08086.

10 A. So because this is a -- this is my write-up. It's more
11 than likely I put that in there.

12 Q. Okay. So if it's incorrect, which you would have no way of
13 knowing at this moment, I understand that, but if it's
14 incorrect it would be you entered it incorrectly; correct? Or
15 there was a reason for you to enter the wrong birthday, I don't
16 know, but you entered it; right?

17 A. You said wrong birthday?

18 Q. Yeah. It's a messy question. Let me ask you again.

19 A. Okay.

20 Q. The date of birth that's entered on Page 3, okay.

21 A. Okay.

22 THE COURT: Show him where you're referring to,
23 please.

24 BY MR. FINK:

25 Q. Do you see it or do you want me to --

1 A. I'm on Page 3, yes. I see the date of birth.

2 Q. Okay. The middle of Page 3 is the date of birth for Ylli
3 Didani; correct?

4 A. Yes.

5 Q. That birthday, would that be entered by you on this report?

6 A. Yes, it would be.

7 Q. It wouldn't already be there from past information?

8 A. You know, so our systems have changed. I don't remember if
9 it is automatically populated.

10 Q. Okay.

11 A. Right now it is. I don't remember if in the old TECS
12 system if it's automatically populated. I'm sorry. I can't
13 give you an accurate answer.

14 Q. Don't be sorry. It's possible that you entered it, but the
15 new system pre-populates?

16 A. Correct.

17 Q. Same thing with the address?

18 A. Same thing with the address. Everything is populated.

19 Q. Understood. Can you remind me how you came across -- and
20 you might need to refer to the report, I think it's Page 5 and
21 6 under the narrative -- how you came across the second phone
22 the BlackBerry?

23 A. I'm going to look at my notes.

24 Q. Of course, please. Take your time.

25 A. I don't see the specifics on the second phone, the

1 BlackBerry cellular device, or the Apple iPhone.

2 Q. On the last page of your report, you write "HSI responded"
3 -- this is the last sentence of the narrative on the last page.

4 A. Yeah.

5 Q. "HSI responded and detained two cellular phones, Apple
6 iPhone," and it spells out the model number, "and a BlackBerry
7 phone, which would not turn on," and it gives the date and
8 time, "by HSI Special Agent Nugent." Do you see that?

9 A. Maybe I misunderstood the question. I thought you asked me
10 how did I come across the phone.

11 Q. I did. I did ask you that.

12 A. I don't have any specific --

13 Q. Your answer is you don't know how you came across it?

14 A. Correct.

15 Q. But it certainly happened, in your memory at least, later
16 in the investigation, because all you took at first was an
17 iPhone; right?

18 A. I believe it was an iPhone, correct.

19 Q. So the BlackBerry must have come later, either with the
20 baggage or in some other circumstance; right?

21 A. Well, the BlackBerry because of the issue of it not turning
22 on I believe that -- my memory recollects that it was found in
23 the bags.

24 Q. Okay. So you took custody or detained these two phones;
25 correct?

1 A. Correct.

2 Q. Did you manually go through them at all in any way?

3 A. No. I would have wrote it. I would have wrote it down if
4 I did, because I've always --

5 Q. That's your practice?

6 A. It's my practice. I do not have it in this report, so I
7 don't believe I did.

8 Q. So your belief is that you don't remember, but your belief
9 is because you didn't write it down you likely didn't go
10 through the phone at that point; correct?

11 A. I see that I got the phone information. So I probably
12 looked at the phone information for the report and detention,
13 but I don't believe I did a manual examination on the cellular
14 device.

15 Q. Now, Exhibit 6, which was admitted, is the receipt for that
16 detention, and you recall that; right?

17 A. Yes.

18 Q. And that specifically mentions the two phones that were
19 detained; right?

20 A. Yes.

21 Q. Now, when you detain these eventually, you know, as you can
22 see at the bottom, which you were asked about at direct
23 examination, it moves to other agencies, and you know what
24 that's called. It's called chain of custody; right?

25 A. Right.

1 Q. So the signatures that we see at the bottom are going from
2 your hands to another agency, to another person in that agency,
3 what have you, but that's what we're looking at when we look at
4 that bottom box; right?

5 A. Correct.

6 Q. Initially the detention of the phones and the custody of
7 the phones was in the control of the Customs Protection --
8 Customs Border Protection; right?

9 A. Yes.

10 Q. CPB. When you did that, when you're holding those phones
11 in your pocket, it's very clear from your direct examination
12 that you are well familiar with policies, you are well trained,
13 we're very lucky to have you. When you had those phones in
14 your hands, in your mind, and at all times, in fact, during Mr.
15 Didani's detention, you are operating under CBP policy; is that
16 correct?

17 A. Correct, until it's transferred over to HSI in which it
18 would be transferred --

19 Q. Whatever happens with HSI is not my question. When you are
20 operating, when you are doing your job and you have those
21 phones, you are using CBP policy; correct?

22 A. At that time, yes.

23 MR. FINK: No more. Thank you, Judge.

24 Thank you, Officer.

25 MR. McDONALD: If I may.

1 THE COURT: Yes.

2 REDIRECT EXAMINATION

3 BY MR. McDONALD:

4 Q. Once you hand over the phone to another agent, in this case
5 HSI, do you know whose policy controls?

6 A. As soon as it's transferred over to --

7 MR. FINK: Objection to -- forgive me, Officer. Sorry
8 to cut you off.

9 Judge, this is again a legal conclusion, which I don't
10 see what the foundation for him to decide what policy controls.
11 He answered what policy he follows, and you're going to decide
12 which ones should have been followed. I think it's beyond his
13 expertise, it's speculative, and it calls for a legal
14 conclusion.

15 MR. McDONALD: I think he can answer what he believes
16 -- what policy he believes to control once he hands a phone off
17 to another sister agency.

18 THE COURT: I think he can do that, too. So it's
19 overruled even though I know that I will not treat it as legal
20 conclusion, because I'll be making it.

21 MR. FINK: Thank you, Judge.

22 THE COURT: You may answer.

23 THE WITNESS: The policy dictates that once it's
24 transferred over to another agency it then is under the
25 umbrella of their policy.

1 BY MR. McDONALD:

2 Q. Oh. Your own policy says that, is that what you're saying?
3 Are you saying that CBP policy dictates that once a phone is
4 transferred to another agent it's that other agency's policy
5 that controls?

6 A. Yes.

7 Q. All right. Just a couple more.

8 A. I want to -- to the best of my knowledge, yes.

9 Q. All right. Now, all people who are entering primary
10 inspection are not free to leave; correct?

11 A. I'm sorry. Repeat the question.

12 Q. Anyone who's entering primary inspection from an
13 international flight is not free to leave, they are -- they
14 need to be examined by primary inspection?

15 A. Correct.

16 Q. All right. The last thing I want to talk to you about --
17 well, two more things, but the second to last thing, I guess,
18 is Mr. Fink asked you on your report about this Page 3, and
19 there was a notation that if encountered -- well, you noted on
20 Page 3 of your report that seven vials were encountered and
21 that were found and if encountered a hundred percent bag exam
22 should take place?

23 A. Yes.

24 Q. I want to compare that with the narrative of your report
25 where you say during baggage -- during a search of his baggage

1 -- and I'll quote it for you here. This is on Page 5 of 6.

2 MR. FINK: I'm sorry. If this is being used as
3 impeachment, I have no objection, but otherwise there would
4 have to be a basis for him to refer to the report, a
5 recollection, something. If he's impeaching him with this
6 report, then okay.

7 MR. McDONALD: I'm not impeaching him with the report.
8 I'm addressing an issue that Mr. Fink raised about two
9 different portions of his report or his testimony that say
10 something different. So I'm simply asking him if he in his
11 report -- well, I'll ask it another way if I may.

12 THE COURT: You may.

13 MR. McDONALD: Thank you.

14 THE COURT: Sustained. You may ask it another way.

15 BY MR. McDONALD:

16 Q. Officer Parisi, do you remember in your report if you wrote
17 when the seven vials of Kigtropin were located?

18 A. I'm sorry. Repeat the question.

19 Q. Do you recall writing in your report at what point the
20 seven vials of HGH were found in Mr. Didani's luggage?

21 A. I don't believe I stated exactly when it was found.

22 Q. Okay. Do you remember if your report talks about that?

23 A. May I reference it?

24 Q. Well, you first have to tell me if you remember it.

25 A. I don't remember it.

1 Q. Would it refresh your memory if you took a look at your
2 report?

3 A. Yes.

4 Q. All right. Please do so. Read it to yourself and let me
5 know if and when your memory is refreshed.

6 A. Okay. My memory is refreshed.

7 Q. All right. And so do you now remember if your report talks
8 about when the Kigtropin or the HGH was found?

9 A. Yes.

10 Q. Where was that?

11 A. During the baggage exam of the subject.

12 Q. Now, Mr. Fink had asked you about a prior portion of your
13 report on Page 3. Do you remember that?

14 A. Yes.

15 Q. Can you explain why those two things appear to be
16 different, or if they're different at all?

17 A. You said different with the milligrams or milliliters?

18 Q. No, no. I'm referring to Page -- Mr. Fink asked you on
19 Page 3 of your report. At the bottom there's a statement in
20 the TECS information in the remarks. Do you remember him
21 asking you about that?

22 A. Yes.

23 Q. All right. Here you say that the subject declared seven
24 vials of HGH and the substance was seized?

25 A. Yes.

1 Q. "If encountered, a hundred percent bag exam is
2 recommended."

3 But you just had said that you encountered the vials
4 during the baggage exam. So I'm trying to understand --

5 A. I think everybody's confused about what this is. This is
6 actually a TECS lookout. In order to complete the seizure,
7 this needs to be inputted. So that has no bearing about
8 anything about the seizure itself. This is just because -- so
9 when he travels again this is going to pop. This is a lookout
10 just like when it was brought to my attention.

11 Q. Oh, I see. So your note here, "If encountered, 100 percent
12 bag exam is recommended," is for future encounters?

13 A. Correct. In order to complete the seizure, this needs to
14 be inputted. I have no -- I have no -- it has to be done. I
15 can't skip that part.

16 Q. All right. I've got one more question. After you detained
17 the phones, interviewed Mr. Didani and handed the phones to
18 Agent Nugent, was that the extent of your involvement in this
19 case?

20 A. Yes.

21 MR. McDONALD: Thank you. Nothing else.

22 THE COURT: I have a question kind of like that, and
23 my rule still applies. If you object, you should object now.
24 Otherwise, it's waived.

25 I think you testified to the copy of that form 6051D

1 was given to Mr. Didani and then he was allowed to leave?

2 THE WITNESS: Correct.

3 THE COURT: And does that mean that you released him?

4 THE WITNESS: Correct. At no time was he arrested or
5 put in handcuffs. All that was with the HGH seizure was an
6 administrative seizure. It wasn't a criminal seizure.

7 THE COURT: Okay. Now, somebody who is one of those
8 random people that gets taken to secondary, if they refuse to
9 go do they get handcuffed and taken to secondary?

10 THE WITNESS: Yes, yes. I mean, the COMPEX was
11 enacted by Congress. It has no -- we have no way with that.
12 We have to meet a certain percentage of COMPEXs nationwide
13 mandated by Congress.

14 THE COURT: Okay. All right. Thank you.

15 Anything else of this witness?

16 MR. FINK: Can I just follow up on your question,
17 Judge --

18 THE COURT: Yes.

19 MR. FINK: -- to the witness?

20 RECROSS EXAMINATION

21 BY MR. FINK:

22 Q. Officer, a passenger coming from overseas or is a foreign
23 national, foreign citizen or permanent resident, what have you,
24 they can elect to return to their home country, can they not?

25 A. They could, but they still have to go through our

1 processes, because they're not going to go right back on the
2 plane.

3 Q. So it's your position that if a foreign national arrives in
4 the United States and does not wish to go through CBP that they
5 cannot turn around and get back on the plane? Is that your
6 position?

7 A. Once they exit that plane, they have to be processed.

8 Q. Do you take that position with regard to the border on land
9 as well? Is that your understanding? If someone is in the
10 tunnel, for example, coming from Windsor and they wish to
11 return to Canada, perhaps they forgot a passport, for whatever
12 reason they might do, are they free to do that?

13 A. It's a different area, and I can't specify in that because
14 I don't work at the border anymore and I --

15 Q. Understood.

16 A. I don't know.

17 Q. Let me try to put some meat on the bones with an example.

18 THE COURT: Do you need to be standing?

19 MR. McDONALD: No, I don't.

20 MR. BILKOVIC: I actually told him to sit down, too,
21 Judge.

22 BY MR. FINK:

23 Q. Last one, because I know we've got one more witness. I'll
24 just put meat on the bones. When there was a vaccine
25 requirement, do you recall that to enter the country from

1 foreign nationals?

2 A. Yes.

3 Q. If someone flies to the United States and realizes, oh, my
4 God, I forgot my vaccine proof and they need to return, they
5 would be free to return to their country; correct?

6 A. No, they wouldn't.

7 Q. You would detain them?

8 A. That's a controlled area. They have to be processed
9 through Customs. Once they exit that plane they have to go
10 down. If they don't have the proper documentations, they will
11 go on the plane, the next plane. We will provide that. We
12 have an MOU with all the airlines nationwide. They will be on
13 the next flight available to go to the same destination that
14 they came from.

15 Q. We're not saying different things. My question to you is
16 they do not necessarily have to be arrested and detained; is
17 that correct?

18 A. But they will be.

19 Q. You're telling me that if someone wants to return to their
20 home country invariably they will be handcuffed and taken to a
21 new plane?

22 A. They will be escorted to a detention area in which they
23 will wait the next plane available for them.

24 Q. But not necessarily handcuffed; right?

25 A. Right.

1 Q. I think we're saying the same thing, but my question to you
2 is there is a difference between a person who is targeted and a
3 random person entering the country, is there not?

4 A. I don't understand the question.

5 Q. You treat targeted individuals who enter the country with a
6 heightened sense of scrutiny of some kind, do you not?

7 A. Yes.

8 MR. FINK: Thank you.

9 Thank you, Judge.

10 THE COURT: Okay. Now, you were standing. Do you
11 want to come back up and ask another question?

12 MR. McDONALD: No, no. Thank you, your Honor. I've
13 just been sitting all day, your Honor.

14 THE COURT: Okay. Me, too, but I am not standing up,
15 and I wish if you would -- I think it just kind of, you know,
16 intimidates the witness.

17 MR. McDONALD: I understand.

18 THE COURT: Okay. You may step down. Not that you
19 could be intimidated, but --

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: You may step down, and you're free to go.

22 THE WITNESS: Okay. Thank you.

23 (At 4:03 p.m., the witness is excused.)

24 MR. McDONALD: May I call the next witness, your
25 Honor?

1 THE COURT: Yeah. Isn't that why your colleague went
2 out?

3 MR. McDONALD: No. He actually -- I think he went out
4 to go to the restroom, but --

5 THE COURT: Oh.

6 MR. McDONALD: I'm calling Special Agent Dan Nugent.
7 It is our last witness, your Honor.

8 THE COURT: Okay. That's great.

9 MR. McDONALD: May I step out in the hallway just to
10 grab him?

11 THE COURT: You certainly may. I thought he went out
12 to get the witness.

13 (Briefly off the record.)

14 THE COURT: All right. Come right up and be sworn in.
15 Right up here.

16 MR. FINK: Your Honor, just for the record --

17 THE COURT: Excuse me a second.

18 Tell your colleague that I really like it if you're at
19 counsel table that if you want to be excused you tell me that
20 you want to be excused.

21 MR. McDONALD: Do you want me to tell my colleague,
22 your Honor?

23 THE COURT: I do.

24 MR. McDONALD: Yes, your Honor.

25 MR. FINK: On that note, my co-counsel has a flight at

1 6 p.m. So he may excuse himself, if it's okay with the court,
2 around 4:15, 4:30, if the court is okay with that.

3 THE COURT: That's fine, as long as he does so
4 quietly. And 4:15 is going to be in about five minutes, okay.

5 MR. FINK: Thank you, Judge.

6 THE COURT: You're welcome.

7 (Oath administered.)

8 THE COURT: Okay. When you're seated, state your full
9 name. Spell your last name; okay?

10 THE WITNESS: Okay.

11 THE COURT: There isn't any dispute about who these
12 witnesses are; right?

13 MR. FINK: No, Judge.

14 THE COURT: Because I have been, at the request of
15 other attorneys, been making them take their masks down, but I
16 think you don't have any dispute about who they are; right?

17 MR. FINK: No, Judge. I very much appreciate you
18 asking, but no.

19 THE COURT: Okay. You don't either; right? But
20 they're your witnesses so I assume you don't --

21 MR. McDONALD: I don't either, your Honor.

22 THE COURT: Okay. Very well.

23 State your full name. Spell your last name.

24 THE WITNESS: Daniel Nugent, N-U-G-E-N-T.

25 MR. McDONALD: Your Honor, may I have one moment?

1 THE COURT: You may.

2 (At 4:05 p.m., briefly off the record.)

3 MR. McDONALD: I apologize, your Honor.

4 THE COURT: You don't have to apologize. I was trying
5 to make it so you wouldn't have to do that, but okay. Let's
6 proceed.

7

— — —

8 DANIEL NUGENT,

9 at 4:05 p.m. sworn as a witness, testified as follows:

10

— — —

11 DIRECT EXAMINATION

12 BY MR. McDONALD:

13 Q. Where are you employed, sir?

14 A. Homeland Security Investigations.

15 Q. And what particular office?

16 A. I am currently assigned to the special agent in charge in
17 Chicago.

18 Q. How long have you been employed with Homeland Security
19 Investigations?

20 A. A little over 14 years.

21 Q. Did you have any law enforcement career prior to Homeland
22 Security Investigations?

23 A. I worked for Customs and Border Protection for
24 approximately five years.

25 Q. What about prior to Customs and Border Protection? Law

1 enforcement?

2 A. No.

3 Q. And can you tell Judge Hood what your current duties are
4 with Homeland Security Investigations?

5 A. Currently?

6 Q. Currently.

7 A. Currently I'm assigned to Counter-Proliferation.

8 THE COURT: Counter ...

9 THE WITNESS: Proliferation Investigations.

10 BY MR. McDONALD:

11 Q. All right. And just briefly, what is Counter-Proliferation
12 Investigations?

13 A. It's essentially illegal exports of weapons and controlled
14 technology from the United States.

15 Q. Back when --

16 THE COURT: Excuse me just a minute. Illegal exports
17 of technology and what else? What did you say first, firearms?

18 THE WITNESS: Weapons.

19 THE COURT: Weapons, okay. All right. Thank you.
20 Go ahead, Counsel.

21 MR. McDONALD: Thank you, your Honor.

22 BY MR. McDONALD:

23 Q. When you first started with Homeland Security
24 Investigations, were you employed in the Chicago office?

25 A. I was employed at the Chicago O'Hare Airport office.

1 Q. When you first started with HSI?

2 A. Yes.

3 Q. Back in August of 2016 were you employed with the United
4 States Homeland Security Investigations at Chicago O'Hare?

5 A. Yes.

6 Q. And back on that day what were your duties?

7 A. My duties were mainly to investigate narcotics smuggling,
8 bulk cash smuggling. And during specific times where I was the
9 duty agent I would handle seizures at the ports of entry at the
10 local mail unit in the airports.

11 Q. Prior to 2016 had you received any training as it relates
12 to border search authority?

13 A. Prior to 2016?

14 Q. Correct.

15 A. Yes.

16 Q. And when you initially became employed with Customs and
17 Border Protection did you reach border search authority
18 training?

19 A. Yes.

20 Q. Did you also receive training when you came to HSI?

21 A. Yes.

22 Q. On August 6, 2016 do you recall if that was a day that you
23 were on duty?

24 A. Yes. I was -- that was a day on one of my duty weeks.

25 Q. Okay. And so what are your responsibilities when you're on

1 duty?

2 A. When I'm on duty, I would frequently get calls from CBP,
3 Customs and Border Protection, about seizures made at the
4 international mail unit as well as seizures made at Midway
5 Airport and O'Hare Airport.

6 Q. In the course of your duties as a duty agent, would you
7 ever respond to the airport to handle requests for other
8 offices around the country?

9 A. Yes. That was another frequent duty that I had to perform
10 while I was a duty agent.

11 Q. And prior to 2016 can you estimate how many times you would
12 assist another agency with a request at the airport?

13 A. It was another agency or -- most of the time the request
14 came from Homeland Security investigations, or ICE at the time,
15 and it was a frequent request that I would get multiple times
16 per duty week.

17 Q. Okay. And how often were you on duty?

18 A. I was on duty at that time probably one week every month
19 and a half to two months.

20 Q. Before August 6 of 2016 did you have on occasion to receive
21 information from another individual, someone by the name of
22 Ylli Didani?

23 A. Yes.

24 Q. And from whom did you receive that information?

25 A. HSI Task Force Officer Josh Bianchi.

1 Q. He's from Detroit?

2 A. Yes.

3 Q. Can you tell Judge Hood what the nature of that information
4 was?

5 A. From what I recall, the information I received was that HSI
6 Detroit was investigating this individual for either drug
7 smuggling or drug trafficking.

8 Q. Any other information from Officer Bianchi besides the
9 nature of the investigation?

10 A. I was informed that he was coming in from out of the
11 country.

12 Q. On what day?

13 A. I believe August 6.

14 Q. All right. And were you asked to do anything -- did
15 Officer Bianchi ask you to do anything once Mr. Didani came
16 into the country on August 6?

17 A. Yes. The task force officer in Detroit, Bianchi, asked
18 that Mr. Didani have a secondary inspection conducted at the
19 port of entry.

20 Q. Okay. On August 6 did you have on occasion to go to
21 secondary inspection at the Chicago airport per HSI Detroit's
22 request?

23 A. Yes, I did.

24 Q. And do you remember if you were at home before you went to
25 the airport or you were already at the airport?

1 A. I don't specifically recall, but with it having been a
2 Saturday I believe that I probably arrived at the airport
3 sometime during the inspection or shortly thereafter.

4 Q. All right. And when you arrived in secondary do you recall
5 speaking with anyone?

6 A. I spoke to Officer Matthew Parisi.

7 Q. And what, if anything, did Officer Parisi tell you?

8 A. He told me that they had located what they suspected to be
9 human growth hormone inside of Mr. Didani's luggage?

10 Q. Based on your training and experience as a special agent
11 with Homeland Security Investigations, do you know if it's
12 unlawful to bring in or smuggle HGH into the United States?

13 A. Yes, it is illegal to import.

14 Q. Do you know when you got there if an interview of Mr.
15 Didani had been conducted?

16 A. I believe a standard interview, secondary inspection
17 interview, took place between the CBP officers doing the
18 inspection and Mr. Didani.

19 Q. Do you know whether you received any information about that
20 interview once you got into secondary?

21 A. Yes. I believe that statements made by Mr. Didani to the
22 CBP officers was relayed to me.

23 Q. And did you communicate what was relayed to you to Officer
24 Bianchi in Detroit?

25 A. I believe that I did. That would be something that I would

1 normally do.

2 Q. Okay. Did there come a time when you came into possession
3 of Mr. Didani's cellular phone or phones?

4 A. Yes.

5 Q. How many phones did you come into possession of?

6 A. I recall there being two cellular cell phones.

7 Q. Can you describe them generally?

8 A. I believe one phone was an iPhone and the other phone was a
9 BlackBerry.

10 Q. And can you describe how you came into possession of Mr.
11 Didani's phone?

12 A. Those phones were provided to me from Officer Parisi.

13 Q. What, if anything, did you do with Mr. Didani's phones
14 after getting that from Mr. Parisi?

15 A. I conducted a cursory inspection of one of the phones.

16 Q. Do you remember which phone you conducted a cursory
17 inspection of?

18 A. No, I do not.

19 Q. And when you say -- when you said cursory inspection, what
20 do you mean?

21 A. Just a brief search of like photographs stored inside the
22 phone. Nothing intrusive, nothing where we hooked up
23 technology to it to dump the phone.

24 Q. Do you remember if you conducted that manual search in the
25 presence of Officer Parisi or Mr. Didani?

1 A. I don't recall.

2 Q. Can you tell Judge Hood what, if anything, you found during
3 this manual search of the Mr. Didani's phone?

4 A. I recall finding a -- what appeared to be a photograph of a
5 hand-drawn picture of what appeared to be a cargo container
6 with a raised floor and an arrow pointing, I believe, to the
7 raised floor.

8 Q. Okay. So just so I'm clear, you said you saw a handwritten
9 drawing of what appeared to be what?

10 A. A cargo container.

11 Q. With a arrow pointed where?

12 A. I believe to like a raised floor.

13 Q. All right. And was that significant to you in any way?

14 A. That was significant to me because I'm familiar that drug
15 smuggling occurs inside of cargo containers with raised floors.

16 Q. And you're familiar with that based on your experience as
17 an HSI special agent assigned to conduct drug investigations?

18 A. Yes, as well as intelligence reports that I've read in the
19 past.

20 MR. McDONALD: May I approach the witness with --

21 THE COURT: You may.

22 MR. McDONALD: -- Defendant's Exhibit number 1 that's
23 been admitted?

24 THE COURT: You may.

25

1 BY MR. McDONALD:

2 Q. I'm showing you, Special Agent Nugent, Page 5 of Defense
3 Exhibit number 1.

4 MR. FINK: Officer, can you tell me what the Bates
5 label on the bottom right is, the number at the bottom right?

6 THE WITNESS: Didani-00220.

7 MR. FINK: Thank you.

8 BY MR. McDONALD:

9 Q. For the record, I'm showing you Page 5 of defense
10 exhibit -- Defendant's Exhibit number 5. Can you identify what
11 you see on that page?

12 THE COURT: I thought it was number 1. It's not?
13 It's Exhibit 5?

14 MR. FINK: Defendant's 1.

15 MR. McDONALD: Maybe I misspoke, your Honor. What I
16 meant to say was Defendant's Exhibit 1, Page 5. If I misspoke,
17 I apologize.

18 THE COURT: All right. I thought you said Exhibit 5.
19 Sorry. Okay. Go ahead.

20 BY MR. McDONALD:

21 Q. On Page 5 do you recognize any photos that are familiar to
22 you?

23 A. The image on the bottom left.

24 Q. How many photos are on that page?

25 A. Four.

1 Q. And you said in the bottom left there's a photo you
2 recognize. How do you recognize it?

3 A. It looks very similar to what I saw on his phone when he
4 came in.

5 Q. And that's the hand drawing of what you believe to be a
6 container with an arrow pointing to the floor?

7 A. Yes.

8 MR. McDONALD: May I reapproach?

9 THE COURT: You may.

10 You all at counsel table have to be a little bit more
11 quiet, please.

12 MR. FINK: I'm so sorry, Judge.

13 THE COURT: Okay.

14 MR. McDONALD: May we have one moment, your Honor?

15 THE COURT: You may.

16 (At 4:17 p.m., briefly off the record.)

17 BY MR. McDONALD:

18 Q. Just so we're clear, you're not certain if this is the
19 exact photo of what you saw when you were manually scrolling
20 it, but it's something similar to that?

21 A. It was something similar to that, yes.

22 Q. At that point what happened after you saw this image during
23 a manual review?

24 A. I stopped searching the phone and --

25 Q. Why -- I'm sorry. Go ahead.

1 A. I stopped searching the phone.

2 Q. Why did you stop searching the phone?

3 A. Because I saw what may have been evidence of a crime. So I
4 stopped searching and sent it up to Detroit.

5 Q. Okay. And did you make a -- you said you sent the phones
6 to Detroit?

7 A. Yes.

8 Q. And how did you do that?

9 A. Via Fed Ex, I believe.

10 Q. Okay. But you make a decision after you scroll through
11 these photos to detain the phones; is that fair?

12 A. Yes.

13 MR. McDONALD: All right. May I approach the witness
14 again?

15 THE COURT: You may.

16 BY MR. McDONALD:

17 Q. I'm showing you Government's Exhibit 6. It's already been
18 admitted. Do you recognize what's in front of you?

19 A. Yes.

20 Q. And can you identify it for the record?

21 A. It's a DHS form 6051D for line item 1 and line item 2, two
22 cell phones.

23 Q. And is that the form that you remember being used for the
24 detention of Mr. Didani's iPhone and BlackBerry?

25 A. Yes.

1 Q. Do you see your signature anywhere on that?

2 A. Yes.

3 Q. Where do you see your signature and what is the date next
4 to your signature?

5 A. It's the first line of the acceptance chain of custody
6 where I took custody of the phones from Officer Parisi on
7 August 6 of 2016.

8 Q. Okay. The next line, signature line, do you know the date
9 of that?

10 A. Looks like August 9th of '16.

11 Q. And does it indicate an individual?

12 A. Yes.

13 Q. If you can read it, who is that?

14 A. Osborn, Special Agent with HSI.

15 Q. And do you know Special Agent Osborn?

16 A. No.

17 Q. Now, based on your training and experience, given that Mr.
18 Didani attempted to unlawfully bring in HGH into the United
19 States and information you had learned on the -- from the TECS
20 record along with this manual review of the phone, did you
21 believe there was reasonable suspicion to further search -- or
22 forensically search his phone?

23 A. Yes.

24 Q. Why did you believe that?

25 A. I believe that because of what was found on the phone, the

1 totality of the circumstances, I guess, what was found on the
2 phone, what was found in his luggage, and the fact that he was
3 under investigation for drug smuggling or drug trafficking.

4 Q. All right. Now, are you familiar with HSI policy with
5 respect to -- back in 2016 with respect to the electronic --
6 excuse me -- border searches of electronic devices?

7 A. Yes.

8 Q. And have you been trained -- back then were you trained on
9 that particular policy?

10 A. Yes.

11 MR. McDONALD: May I approach with Government's
12 proposed Exhibit number 11?

13 THE COURT: You may.

14 MR. McDONALD: May I approach the witness?

15 THE COURT: Yes, you may.

16 MR. McDONALD: Thank you.

17 BY MR. McDONALD:

18 Q. Special Agent Nugent, I'm showing you what's been marked as
19 -- and for the record I'm taking Exhibit 6 back, but I'm
20 showing you Government's Exhibit number 11. Do you recognize
21 that?

22 A. Yes.

23 Q. What is that?

24 A. That is the Immigration and Customs Enforcement border
25 search of electronic devices memorandum.

1 Q. Is that a copy of the policy that governs border searches
2 for electronic devices that would have been applicable back in
3 2016?

4 A. Yes.

5 MR. McDONALD: Move for admission of 11?

6 THE COURT: Any objection?

7 MR. FINK: No objection. Just to note for the record
8 that this does not have a Bates stamp on it. I was shown it
9 Saturday.

10 THE COURT: Okay. It's admitted as number 11.

11 MR. FINK: Thank you, Judge.

12 BY MR. McDONALD:

13 Q. According to that policy, Exhibit number 11, do you know
14 how long agents are permitted to detain a phone under HSI
15 policy to conduct a border search?

16 A. 30 days.

17 Q. And at the time you received the phone from Officer Parisi
18 is it fair to say that HSI policy would be applicable at that
19 point on?

20 A. Yes.

21 MR. FINK: Objection, Judge. You've overruled it
22 before, but objection about his expertise, foundation, legal
23 conclusion.

24 THE COURT: All right. I'm not treating it as a legal
25 conclusion, but I am going to let him answer.

1 MR. FINK: Thank you, your Honor.

2 THE COURT: So noted for the record.

3 MR. McDONALD: Thank you, your Honor.

4 THE COURT: What is the question again, though? I
5 want to know how you phrased it.

6 MR. McDONALD: The question was based on his
7 understanding of the policy once he took possession of the
8 phones is HSI border search policy applicable at that point.

9 THE COURT: Okay. All right. I just want to be sure.
10 Okay.

11 BY MR. McDONALD:

12 Q. Just one final question if I may, Special Agent Nugent.

13 Based on what you testified today, that you showed up at
14 secondary, detained some phones, did a manual review of one of
15 the phones and then sent those phones to Detroit, was that the
16 extent of your involvement in this case?

17 A. As far as I can remember, yes.

18 MR. McDONALD: May I have one minute, your Honor?

19 THE COURT: Yes.

20 (At 4:23 p.m., briefly off the record.)

21 MR. McDONALD: No other questions. Thank you.

22 THE COURT: Do you wish to cross-examine?

23 MR. FINK: I do, Judge.

24 MR. BILKOVIC: Your Honor, may I have permission to
25 leave for five minutes to use the restroom?

1 THE COURT: Yes, you may.

2 MR. BILKOVIC: Thank you.

3 MR. FINK: I object.

4 THE COURT: You're objecting to what?

5 MR. FINK: Him leaving for the bathroom.

6 THE COURT: I'm very sorry about that. Overruled.

7 Did you have any interaction with anyone, anyone in
8 Detroit, relative to these phones after you took possession of
9 them?

10 THE WITNESS: I'm sure that I would have called
11 Officer Bianchi, or TFO Bianchi, and told him what I found on
12 the phone.

13 THE COURT: Okay.

14 THE WITNESS: That would be my normal practice.

15 THE COURT: All right. Go ahead, please.

16 CROSS-EXAMINATION

17 BY MR. FINK:

18 Q. Agent, were you present during the interview or questioning
19 of Mr. Didani on August 6, 2016?

20 A. I don't recall.

21 Q. It's not a no, it's a don't remember?

22 A. I don't remember.

23 Q. So if you are mentioned in reports by TFO Bianchi as making
24 statements about the interview, I mean that theoretically could
25 be accurate you're saying?

1 A. In regards to what Mr. Didani said during his secondary --

2 Q. Right. Attributing his notes to what you told him, is it
3 inaccurate or has it escaped your memory?

4 A. No. It's possible that I showed up at the airport and I
5 was provided with information about what was said. And then I
6 called Officer Bianchi and I said this is what was said per the
7 CBP officers that interviewed him.

8 (At 4:25 p.m., briefly off the record.)

9 BY MR. FINK:

10 Q. Agent Nugent, just to finish up and to clarify that, you
11 don't have a specific memory as you sit today testifying of
12 being part of the interview of Didani on August 6, 2016; is
13 that right?

14 A. That's correct.

15 Q. You don't have that memory; right?

16 A. I don't have that recollection.

17 Q. So, if I were to ask you questions about what was said or
18 what Bianchi said you said, you're not going to recall the
19 specific details?

20 A. Can you repeat that, please?

21 Q. If I repeat to you some of the notes that were made by
22 Agent Bianchi about what you told him, you're not going to have
23 any recollection as we sit here today of that interview;
24 correct?

25 A. I would not have a recollection.

1 Q. Are you familiar with iPhones, Agent?

2 A. Yeah, somewhat.

3 Q. Do you have one?

4 A. I do.

5 Q. Can you physically carry drugs on your iPhone?

6 A. Physically carry drugs on your iPhone?

7 Q. Right.

8 A. I don't believe you can.

9 Q. Okay. So you weren't looking for physical drugs when you
10 opened and manually searched his phone; right?

11 A. I wasn't looking, correct.

12 Q. What were you looking for on his phone?

13 A. I was looking for -- for the most part, merchandise
14 relating to HGH.

15 Q. Pictures of drugs?

16 A. Perhaps pictures of drugs, yes.

17 Q. Did you look at -- pursuant to that presumably, and correct
18 me if I'm wrong, you looked through his photos; correct?

19 A. I believe I did.

20 Q. How much time would you say you spent looking through the
21 photos?

22 A. I don't recall.

23 Q. Do you know if it was more or less than an hour?

24 A. I don't recall. I don't think I ever spent an hour looking
25 through somebody's phone, no.

1 Q. Do you know how long it took you to find the alleged
2 container picture?

3 A. I don't.

4 Q. Do you have that in front of you still, Agent, the
5 container picture?

6 A. I do not.

7 Q. If you need me to bring it to you, you can look at it.

8 You testified pretty definitively on direct
9 examination that what you saw was a shipping container. Do you
10 recall that?

11 A. I recall that, yes.

12 Q. Okay. What about that picture gives you the impression
13 that it's a shipping container? And, if you need to see it,
14 please let me know. Maybe you know by your recollection.

15 A. I'm going to go off my recollection.

16 Q. Sure.

17 A. You know, it was I believe a square thing, and it appeared
18 to have -- something made me think it had a raised floor with
19 an arrow and like a number that I equated to presumably being
20 related to drug smuggling.

21 MR. FINK: Judge, do you have Defendant's 1?

22 THE COURT: I think maybe I do.

23 MR. FINK: Document titled "Photos and messages from
24 Didani's cell phone."

25 THE COURT: Maybe I don't.

1 Yeah, I think you took it back. The government took
2 it back.

3 MR. FINK: I'm producing it to your law clerk just so
4 you can see that.

5 THE COURT: Okay. You know, though, I did see it so
6 maybe I do have it.

7 MR. FINK: On that page that's open for your Honor,
8 that's the -- just so everybody -- I'm showing a picture that
9 was shown to the picture of the container you're describing.

10 THE COURT: This is not the container.

11 Oh, it's the sketch. Oh, yes. Okay.

12 MR. FINK: Sketch of the container.

13 THE COURT: Okay. Do you need to see it?

14 THE WITNESS: If you don't mind, Judge, I guess.

15 THE COURT: Pass it to him.

16 THE WITNESS: Thank you.

17 MR. FINK: Here's another copy of that.

18 THE COURT: I thought I had that. I looked at it when
19 he pulled it up.

20 It's Defendant's 1; right? Is this Defendant's 1?

21 MR. FINK: That's a page from Defendant's 1 just so
22 you can see what I'm referring to.

23 THE COURT: Okay. I have it. I have it, I believe.
24 Find the page, and you can take it back.

25 MR. FINK: 220, I think.

1 THE COURT: Yeah, I got it. I do have it.

2 BY MR. FINK:

3 Q. Officer, let me clarify that. You did say on direct
4 examination you're not sure if this is the precise sketch that
5 you saw on his phone; correct?

6 A. Correct.

7 Q. But this is at least similar to what you recall seeing?

8 A. Yes.

9 Q. And this image where I think we can see the word "floor"
10 and perhaps a number at the bottom, this is what you're
11 alleging to be a shipping container; correct?

12 A. Either this or something similar to that, yes.

13 Q. Of course. I understand. But something similar to that?

14 A. Yes.

15 Q. If you look at this image, whether it was that one or not
16 that you saw in August, looking at this image before you do you
17 see a shipping container?

18 A. I see what -- all I can say is at the time I interpreted it
19 to be a shipping container based on the totality of the
20 circumstances.

21 Q. Sure. I'm asking you right now looking at that picture
22 does that appear to you to be a shipping container?

23 A. It could be.

24 Q. But it also could be a sketch of a living room; right?

25 A. It could be.

1 Q. Thank you, Officer. Do you recall looking through anything
2 else in Mr. Didani's phone that day?

3 A. I don't recall.

4 Q. Okay. Is it possible you did?

5 A. It's possible, yes.

6 Q. How is it you were able to get into the phone? Do you
7 remember?

8 A. I don't recall. I see that on the 6051 detention form
9 there appears to be a PIN number written. So my assumption is
10 that -- and this is an assumption.

11 Q. That's okay.

12 A. That Mr. Didani was asked for his password and he provided
13 it.

14 Q. Do you recall were you looking through the BlackBerry or
15 the iPhone, if you recall?

16 A. I don't recall.

17 Q. A PIN. You said PIN. That could be either -- I just
18 associate that with the old BlackBerrys, but you could mean
19 that to be iPhone, too, for all you know?

20 A. A passport to get into a phone.

21 Q. Pass code or PIN. Understood. And you don't recall how
22 much of the other parts of the phone that you looked at?

23 A. I don't.

24 Q. But you stated on direct examination whatever you recall
25 today you were pretty certain that you saw evidence of

1 criminality; correct?

2 A. Possibly, yes.

3 Q. Something concerned you; right?

4 A. Yes.

5 Q. So much so that you locked the phone; right?

6 A. I don't know if I locked it.

7 Q. Turned it off?

8 A. I don't recall.

9 Q. Did the screen go from lit to not lit?

10 A. I don't recall.

11 Q. So much so that you stopped looking at it; correct?

12 A. Yes.

13 Q. So much so that you sent it about 300 miles to Detroit;
14 correct?

15 A. I shipped it off to Detroit, yes.

16 Q. So what was the purpose of looking through the phone that
17 afternoon?

18 A. The purpose of looking through the phone initially is
19 because at the time I didn't need reasonable suspicion to go
20 through any phone. But based on what was found in his luggage,
21 you know, he was attempting to bring in something that's
22 prohibited to the United States. So we were looking further
23 into that.

24 Q. Okay. So it's your position and your understanding that at
25 the time -- even before the HGH, you don't need reasonable

1 suspicion or anything to go through that phone? That's your
2 understanding?

3 A. My understanding was at that time that was correct.

4 Q. Regardless of the HGH; right?

5 A. Correct.

6 Q. Now we have the HGH, and it's your position that not only
7 do I have the right to do this at the border, but now I have
8 evidence of physical contraband in his baggage; correct?

9 A. Can you say that again, please?

10 Q. Sure. I'm making sure I understand your thought process.
11 You indicated to me first that it was your belief that you
12 don't need reasonable suspicion, period, to go through
13 someone's phone at the border; right? That's your overarching
14 belief; correct?

15 A. Correct.

16 Q. Okay. But in this case not only do we have that
17 background, but also you had actual contraband that was found
18 in his baggage; correct?

19 A. Correct.

20 Q. So that in your mind justified further intrusion into his
21 phone as well; right?

22 A. Yeah.

23 Q. Okay. To look for what?

24 A. To look for evidence of a crime, to look for --

25 Q. Of what crime?

1 A. I would say a crime related to drug smuggling or drug
2 distribution. He was under investigation I was told for either
3 drug smuggling or drug distribution. He came through the
4 airport, he had prohibited items, and based on the totality of
5 the circumstances I went through his phone.

6 I saw a picture that I thought might be a cargo
7 container with a raised floor with numbers under it that I
8 thought maybe there is going to be -- maybe this is a cargo
9 container with kilos of any kind of drug in it.

10 Q. So let me understand this correctly, because that was a lot
11 to unpack. The reason you went through the phone, that was my
12 original question, the reason you went through the phone is
13 because, number one, you don't have to have a reason, but you
14 found narcotics and you had background information from before
15 that this guy was being investigated for some kind of crime.
16 Did I recap that correctly?

17 A. That is correct.

18 Q. Okay. So the reason -- the answer to my original question
19 is for those reasons you decided to go through the phone?

20 A. Yes.

21 Q. But then you find evidence allegedly of a crime, a
22 container or living room, and you decide I need to stop now;
23 right?

24 A. Yes.

25 Q. Why?

1 A. I believe at that time -- there's been so many changes to
2 the border search law relating to electronic devices, but if
3 I'm not mistaken I may have been told at some point around then
4 that if you find evidence of a crime that the wise thing to do
5 would be to stop searching, and that's what I did. I stopped
6 searching, and I sent it up to the investigating agent for them
7 to make a determination on what they wanted to do next.

8 Q. Thank you for your candor on that point. Let me ask you,
9 where would you have heard that information that the cautious
10 thing to do is to perhaps take it through the legal process?
11 Where would you have heard that? From your supervisors, from
12 policy? What would you have heard it from?

13 A. If I had heard that before then, it probably would have
14 been from one of our principal legal advisors with our agency.

15 Q. Well, you had it circling around in your head. You just
16 shared it with me, right, changes in the law and the safest
17 thing to do? I mean, that's what you just testified to; right?

18 A. Yes.

19 Q. So obviously --

20 A. Assuming that that was at that time what was in my mind.

21 Q. Well, that's what I'm asking you, why did you stop, and
22 that's your answer. So I'm just asking where that information
23 was coming from, and you said perhaps legal counsel; correct?

24 A. Perhaps, yeah.

25 Q. Okay. And this changing area around the law, if you

1 recall, and the training that you may have received or
2 discussion you may have had is because cell phones carry so
3 much information; correct?

4 MR. McDONALD: Objection, Judge. He has not laid a
5 proper foundation to ask this witness about the intricacies of
6 the changing border search law and whether this witness would
7 know that to begin with. So objection, lack of foundation.

8 MR. FINK: I'm asking something that was offered by
9 this witness and what he was told, what he understands, what
10 the discussions were. It's very important to a reasonable
11 suspicion analysis as to why the intrusion was done and then
12 stopped.

13 THE COURT: Now you're asking a broader question than
14 that, and I'm going to allow the question, one, because it
15 follows up on a answer of the witness himself, and also because
16 he was asked whether or not he had an iPhone similar to, or at
17 least in the family of phones that he had, and he might know
18 based on that what the can contained.

19 Your objection is overruled.

20 BY MR. FINK:

21 Q. To rephrase, Officer -- or, Agent, excuse me, the question
22 was that one of the reasons, was it not, that you were
23 receiving this training and the changes in law, as you said, is
24 because of the tremendous capacity to carry so much data on
25 modern cellular devices; correct?

1 A. I don't know what the reason was.

2 Q. So when you say --

3 A. I don't recall.

4 Q. So when you say changes in the law and things that were
5 being discussed that was in the back of your mind, you just had
6 a general understanding that I'm to be cautious with how much I
7 should search; is that fair?

8 A. Yeah, I tend to be cautious. Yes.

9 Q. Open the phone and look a little bit and then turn it off?

10 A. No. It's open the phone, and if I find evidence of what I
11 suspect to be a crime I stop and then I forward it to the
12 investigating agents to make a determination on what they feel
13 is the proper protocol to follow in terms of continuing a
14 border search or getting a search warrant.

15 Q. Did you seek any warrants in this case yourself?

16 A. No, I did not.

17 Q. Did you solicit a arrest warrant or charges related to the
18 steroid that was found?

19 A. No.

20 Q. Did you share any of the information that you saw on the
21 phone with any local law enforcement, your local U.S.
22 Attorney's Office or anyone in Illinois?

23 A. No.

24 Q. In fact, you released Mr. Didani with the exception of
25 detaining his cell phones? He himself was released; correct?

1 A. I believe he was, yes.

2 Q. I'm curious as to why if you had evidence of a crime
3 occurring in your jurisdiction that it was your decision just
4 to send the phones to Detroit and wash your hands of it. Is
5 there a reason why you didn't report the crime occurring in
6 your jurisdiction?

7 A. I don't believe that the amount of HGH that was found with
8 Mr. Didani would have been prosecuted federally and --

9 Q. So you used your discretion that you have as an officer on
10 whether to report or seek charges in certain instances; right?

11 A. Yes.

12 Q. And the same is true of what you saw in the phone? You
13 said you saw criminality on the phone, but that you just
14 shipped off to Detroit and didn't say anything locally;
15 correct?

16 A. I don't think I could charge him with having a picture of
17 what I suspected to be of what it was.

18 Q. I agree. Thank you.

19 Just one moment, Agent. I want to make sure. I think
20 I'm done.

21 Oh. There is one more category quickly. Go back to
22 the beginning of this August 6 day. Did this come -- did Mr.
23 Didani and the fact that he was being requested for a stop, did
24 that come to your attention that day, on August 6?

25 A. I can't say for sure, but I believe the request came

1 before, maybe a couple days before he came in.

2 Q. Typically would it? Would you get a couple days heads-up?

3 A. It depended on the agent that is investigating, you know, a
4 person coming through.

5 Q. Sure. And the information that you received -- last
6 question, or last category or question -- the information you
7 received from Special Agent Bianchi, what specifically were you
8 aware of before encountering Mr. Didani or detaining his
9 phones? What were you aware of in terms of the investigation
10 and what it was related to?

11 A. Like I said before, I was told that Mr. Didani was under
12 investigation for -- I can't recall if it was drug smuggling or
13 drug trafficking, but that's what I remember.

14 Q. Were there any specifics about what the evidence was in
15 that investigation?

16 A. I don't recall.

17 Q. Okay. In ordinary situations, would you get that detail or
18 would you just be told the general nature of the investigation?

19 A. Usually it was the general nature of the investigation.

20 MR. FINK: Okay. Thank you, Officer.

21 THE COURT: Anything else of this witness?

22 MR. McDONALD: Nothing of this witness. Thank you.

23 THE COURT: All right. Very well.

24 Thank you, sir, for coming. You may step down.

25 (At 4:43 p.m., the witness is excused.)

1 MR. McDONALD: Your Honor, may the two witnesses who
2 testified after Officer Bianchi be excused?

3 THE COURT: I thought I already excused the other
4 gentlemen.

5 MR. McDONALD: May this witness be excused?

6 THE COURT: Yes. I just said he could be excused.

7 MR. McDONALD: Thank you.

8 THE COURT: And do you have further witnesses?

9 MR. McDONALD: We have no further witnesses.

10 THE COURT: Okay. What about defense?

11 MR. FINK: Judge, at this time I don't have any
12 witnesses. If I may propose what we would like to have happen,
13 I would like to get a transcript of today and I would like to
14 further brief a suppression issue. And I discussed this with
15 the government. I suspect they'll be in agreement with this
16 proposed plan.

17 Once we've briefed it and you've made a ruling on the
18 suppression issue, if it's favorable to the defense then there
19 would be a need for further evidentiary hearings on what the
20 fruits of that constitutional violation was. If there is not
21 found to be a constitutional violation, there may be motions to
22 challenge specific warrants in this case, but it would be a
23 entirely different path. So we were hopeful to get a
24 transcript and brief the issue.

25 As to the other two defense pending motions, there's

1 one on the constitutionality and other due process concerns
2 with the MDLEA. I think in the same amount of time to write
3 the brief, the supplemental briefs for today, the government
4 and the defense can stipulate to what the evidence is necessary
5 for a determination on that motion. In other words, I don't
6 think we'll require a hearing.

7 And then as to the final defense motion, because it's
8 on the pleadings on the indictment an evidentiary hearing is
9 not necessary.

10 So all of that to say, Judge, that we would ask for
11 supplemental briefing and a ruling and then we can determine
12 the next steps.

13 THE COURT: Okay. What does the government wish to
14 do?

15 MR. BILKOVIC: No objection, Judge. The only other
16 thing that we talked about is if the court does grant the
17 request for time for additional briefing. When we do come back
18 to argue that, I believe that we had discussed that's the point
19 in time we could argue the additional motions as well, because
20 we do not believe that they will require any testimony.

21 MR. FINK: I agree with that, Judge. I would like
22 oral argument at least on the MDLEA issue as well.

23 THE COURT: Okay. All right. So you all need another
24 day, is that it?

25 Okay. You have transcript to get from two different

1 court reporters, so I don't know what date that will be. So
2 I'll have to have Ms. Saulsberry give you a date. I'll find
3 out from them how long. And when you get it how long do you
4 need to brief?

5 MR. FINK: Once it's in my possession -- I am having a
6 child in two weeks. So I'm taking a brief paternity leave to
7 help my wife, but once those --

8 THE COURT: What does that mean?

9 MR. FINK: That means that -- the reason I'm asking
10 for six weeks --

11 THE COURT: What does -- oh, okay. You're asking for
12 six weeks?

13 MR. FINK: Right. I didn't want you to think that it
14 would take me that long, but I just have a period in there.

15 THE COURT: Yeah, I think so.

16 Six weeks is okay with you?

17 MR. BILKOVIC: That would be fine, your Honor.

18 THE COURT: Okay. So six weeks from now or from when
19 you get the transcript?

20 MR. FINK: I was saying from now.

21 THE COURT: Okay. Let's take it from now. If you
22 don't get the transcript fairly expeditiously, you can come
23 back and stipulate how much more time you need.

24 What's six weeks from now?

25 LAW CLERK: June 5th.

1 THE COURT: Is that six weeks from now? Give us a
2 week to like look at it.

3 LAW CLERK: Yeah. Six weeks is June 5th.

4 MR. FINK: What was it?

5 THE COURT: June 5th you need to file your
6 supplementals.

7 And then they want to come back. Let's give them a
8 day to come back.

9 You can file those supplementals both at the same
10 time; right?

11 MR. BILKOVIC: Yes, your Honor.

12 MR. FINK: Yes.

13 THE COURT: Okay. And then come for argument.
14 When can they come for argument?

15 (A brief discussion was held off the record.)

16 THE COURT: Okay. The 26th. We're going to do it
17 June 26th.

18 Do you want to come in the afternoon or the morning?

19 MR. FINK: Judge, on June 26th I have a murder trial
20 that actually is going in Oakland County Circuit Court. If I
21 can do -- it will probably be jury selection late afternoon I
22 can maybe make it, but ...

23 THE COURT: What about the 27th?

24 MR. FINK: I presume I'll be in trial.

25 THE COURT: How long will you be in trial?

1 MR. FINK: That's only probably a three-day.

2 THE COURT: How many days?

3 MR. FINK: Three. Three days.

4 THE COURT: Okay. So they have to come after.

5 MR. FINK: So the 29th or later?

6 THE COURT: No, you can't.

7 They have to come after July 9th then.

8 LAW CLERK: Right.

9 THE COURT: Okay.

10 LAW CLERK: July 12th.

11 THE COURT: July 12th?

12 LAW CLERK: Yes.

13 THE COURT: And what time?

14 LAW CLERK: Two o'clock.

15 THE COURT: Two o'clock.

16 Are you going to take more than three hours?

17 MR. BILKOVIC: No.

18 MR. FINK: No.

19 THE COURT: Okay. Two o'clock on July 12th, okay.

20 MR. FINK: July 12th, 2 p.m. for arguments, Judge;
21 correct?

22 THE COURT: Right, um-hmm.

23 MR. FINK: Your Honor, the other thing is -- and this
24 is -- I'm raising this for purposes of my client, and this
25 might need to be briefed. My client wishes to subpoena the

1 commander who signed the consent forms for jurisdiction in the
2 United States. As his attorney, my advice has been, in my
3 reading of the law as well as my expert witness, that we do not
4 have standing to challenge the adequacy of the certification
5 documents. My client feels, however, that given the statements
6 that were made in those documents and the dates of when consent
7 was given it's necessary to cross-examine the commander on
8 whether or not he actually could receive the consent given the
9 timing of his appointment.

10 It's my belief under case law we don't have standing
11 to challenge if they're conclusively proven, but my client is
12 insisting that I raise that issue with you. If you'd like me
13 to brief his position, I can do that, but I just wanted the
14 court --

15 THE COURT: It's up to you, but you can't raise it
16 orally. You have to --

17 MR. FINK: I just want the court to be clear on that
18 dynamic here.

19 THE COURT: That's okay, but you can't -- there has to
20 be some case law in it and everything like that.

21 MR. FINK: Sure.

22 THE COURT: So if you want to raise it you're going to
23 have to raise it in a motion.

24 MR. FINK: I understand.

25 MR. BILKOVIC: Your Honor, I do have one question.

1 Does the court want the exhibits or do you want us to take
2 custody of them and resubmit them with our --

3 THE COURT: No, I want them. I want the exhibits.
4 You have your own copy, don't you?

5 MR. BILKOVIC: Not my own copy, but I wrote down what
6 they were so I know what they are.

7 THE COURT: So can you leave them with us?

8 MR. BILKOVIC: I can leave them with you.

9 THE COURT: What about your exhibits? Did you give me
10 all of them?

11 MR. BILKOVIC: Your Honor, may I approach the witness
12 stand to see if our other two exhibits are up there?

13 THE COURT: Yes, you may.

14 MR. BILKOVIC: Thank you.

15 THE COURT: I have Defendant's 1.

16 MR. FINK: Thank you, Judge. I'm going to approach
17 with our exhibits; okay?

18 THE COURT: Okay. That's fine.

19 MR. FINK: You might have 1 already.

20 THE COURT: I have Defendant's 1 already.

21 MR. FINK: Here's 2 and 3.

22 MR. BILKOVIC: And here are the government's 1 through
23 9 and 11. I don't believe we admitted 10.

24 THE COURT: Okay. I'll take those.

25 MR. FINK: This is Defendant's 1.

1 THE COURT: I have Defendant's 1.

2 MR. FINK: Well, fine. I'll take it.

3 THE COURT: I think I have Defendant's 1 in there.

4 MR. FINK: She doesn't have Defendant's 1.

5 THE COURT: You don't think so?

6 MR. FINK: Because I have the tag on it.

7 THE COURT: I know, but I marked one. You gave me one
8 and I think I marked it.

9 MR. FINK: Well now you have a prettier copy that's in
10 color.

11 THE COURT: All right. Anything else that you need to
12 give me?

13 MR. BILKOVIC: No, your Honor. Thank you for your
14 patience and giving us the time for today's hearing.

15 THE COURT: Okay. All right. Very good.

16 MR. BILKOVIC: It was very helpful that we were able
17 to do all the testimony in one day. Thank you so much.

18 THE COURT: Okay. No problem.

19 Now, Mr. Fink, do you have anything else?

20 MR. FINK: Judge, I do not have anything else at this
21 time, no.

22 THE COURT: All right. I don't think it's
23 unreasonable, because it is a different kind of issue that
24 doesn't ordinarily come up. So if it wasn't an issue that
25 ordinarily arose -- if it was an issue that ordinarily arose, I

1 would just let you make an oral motion, but because it's not I
2 think that you need to give me a brief.

3 MR. FINK: I totally understand.

4 THE COURT: Okay. Anything else?

5 MR. BILKOVIC: No, your Honor.

6 THE COURT: Okay.

7 MR. BILKOVIC: Have a good night.

8 THE COURT: Thank you very much.

9 (The proceedings were adjourned at 4:53 p.m.)

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3 CERTIFICATE OF COURT REPORTERS
4

5 We certify that the foregoing pages is a correct
6 transcription of the record of proceedings in the
7 above-entitled matter.

8 **s/Sheri K. Ward**

9 Sheri K. Ward,
10 Federal Official Court Reporter
11 United States District Court
Eastern District of Michigan

12 **s/Sheila D. Rice**

13 Sheila D. Rice
14 Federal Official Court Reporter
United States District Court
Eastern District of Michigan

15 Date: 05/11/2023
16 Detroit, Michigan.